

LITIGATION IN THE NIGERIAN OIL INDUSTRY: A  
SOCIO-LEGAL ANALYSIS OF THE LEGAL DISPUTES  
BETWEEN OIL COMPANIES AND VILLAGE  
COMMUNITIES

Jedrzej George Frynas

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*Litigation in the Nigerian Oil Industry: a  
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Disputes Between Oil Companies and  
Village Communities*

**JEDRZEJ GEORGE FRYNAS**



**Thesis submitted in fulfilment of the degree of Ph.D. in Management,  
Economics, Politics (MEP) at the University of St Andrews**

**FEBRUARY 1999**



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# Table of Contents

Acknowledgements .....	iii
Abstract .....	iv
Court Reports and Legal Abbreviations .....	v
Table of Court Cases .....	vi
Table of Statutes .....	viii
<b>Section 1: Introduction and Methodology</b>	
1.1. Introduction .....	1
1.2. Literature on Nigeria's Oil Industry .....	4
1.3. Methodology and Structure .....	10
<b>Section 2: The Making of the Nigerian Oil Industry - Oil and the Nigerian State</b>	
2.1. Introduction .....	14
2.2. Colonial Origins of Nigeria's Oil .....	16
2.3. Oil Related Legal Arrangements under Colonial Rule .....	20
2.4. Evolution of Nigeria's Oil Industry after Independence .....	24
2.5. Nigeria's Political Economy of Oil .....	31
2.6. Nigerian Petroleum Policy .....	36
2.7. Ethnic Factionalism and Allocation of Resources .....	49
2.8. Community Protests against Oil Companies .....	55
2.9. Conclusion .....	61
<b>Section 3: Nigerian Legal System and Oil Related Legislation</b>	
3.1. Introduction .....	64
3.2. Pre-Colonial Law .....	68
3.3. Colonial Law .....	75
3.4. Post-Colonial Law .....	81
3.5. Customary Land Rights and Land Legislation .....	85
3.6. Petroleum Legislation and Operating Arrangements .....	101
3.7. Oil-Related Environmental Legislation .....	107
3.8. Nigerian Court System .....	120
3.9. Nigerian Legislation and Compensation for Damages .....	123
3.10. Conclusion .....	131
<b>Section 4: Nigerian Legal System in Practice: Results of a Survey*</b>	
<i>Survey Methodology</i>	
4.1. Introduction .....	134
4.2. Methodology .....	136
4.3. Survey Analysis .....	142
4.4. Profile of Respondents .....	146
<i>Main Survey Results: Access to Courts</i>	
4.5. Problems of Access to Courts .....	148
4.6. Views on Access to Courts According to Different Sub-Groups .....	157
<i>Main Survey Results: the Nigerian Judiciary</i>	
4.7. Functioning of the Judiciary and the Court System .....	167
4.8. Extra-judicial Pressures and Enforcement of Court Orders .....	174
<i>Secondary Survey Results</i>	
4.9. Types of Courts .....	184
4.10. Oil Companies and Court Procedure .....	191

4.11. Legal Change and Legislation .....	202
<i>Conclusion</i>	
4.12. Conclusion .....	211
<b>Section 5: Environmental and Social Impact of Oil Operations on Village Communities</b>	
5.1. Introduction .....	219
5.2. Mechanics of Oil Operations in Village Communities .....	223
5.3. Impact of Oil Exploration on Village Communities .....	230
5.4. Impact of Oil Production on Village Communities .....	238
5.5. Land Disputes and Oil Operations .....	249
5.6. Conclusion .....	263
<b>Section 6: Compensation Claims in Oil Related Litigation*</b>	
<i>Introduction</i>	
6.1. Introduction .....	270
<i>Negotiation and Mediation in Oil Related Disputes</i>	
6.2. Compensation Payments through Negotiation and Mediation .....	272
<i>Legal Liability for Oil Operations</i>	
6.3. Basic Principles of Tort Law .....	283
6.4. Negligence .....	286
6.5. Nuisance .....	289
6.6. Strict Liability .....	292
<i>General Legal Defences of Oil Companies</i>	
6.7. Statutes of Limitation .....	298
6.8. Admissibility of Scientific Evidence .....	301
6.9. Misjoinder of Parties and Causes of Action .....	307
<i>Legal Transformation in Oil Related Cases</i>	
6.10. Locus Standi .....	313
6.11. Evidence Rules .....	320
6.12. Quantum of Compensation Awards .....	323
<i>Understanding Legal Transformation</i>	
6.13. Changing Approach to Law .....	332
6.14. Increased Professional Ability of Legal Counsel .....	338
6.15. Impact of Changing Social Attitudes on Judges .....	340
<i>Conclusion</i>	
6.16. Conclusion .....	343
<b>Section 7: Conclusion</b>	
7.1. Findings of the Thesis .....	349
7.2. Relevance of the Thesis .....	355
7.3. Directions for Future Research .....	357
<b>Bibliography</b> .....	362
<b>Appendices</b>	
Appendix A: List of Oil Companies with Oil Licences in Nigeria	
Appendix B: Lawyers' Survey: Map, Survey Design and Remaining Statistical Tables	
Appendix C: Political Economy of Oil in Nigeria: Selected Tables	
Appendix D: Selected Technical and Economic Data on Nigeria's Oil Industry	
Appendix E: Map of Nigeria with Oil Concessions	

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\* Core chapters of the thesis

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# **Abstract**

This thesis analyses legal disputes between village communities and oil companies in Nigeria. We have three principal aims. First, the thesis is an attempt to provide a detailed analysis of the nature of legal disputes between oil companies and village communities in Nigeria, particularly in the light of the rise in oil related litigation. Second, the study of litigation is meant to serve as a window to an understanding of social conflicts between village communities and oil companies. Third, the thesis is aimed at making a contribution to the research and the debate on the role of multinational companies in developing countries and on the day-to-day operations of African legal systems.

The thesis is organised as follows. Section two analyses the political context of oil operations. Section three provides an introduction to the legal framework by discussing Nigeria's formal legal institutions and oil related statute law. An analysis of a survey of Nigerian lawyers in section four is aimed at evaluating the constraints and opportunities faced by potential and actual litigants in oil related litigation which can either encourage or discourage litigants from engaging in litigation. Focusing on issues such as oil spills and compensation payments for land acquisition, factual evidence from court cases in section five illustrates the adverse impact of oil exploration and production on village communities with a view to identifying the sources of conflict between oil companies and the local populace. A detailed analysis of litigation in section six reveals the principles of tort law upon which oil related cases are based, the legal defences employed by oil companies and legal innovations in oil related cases. Section seven concludes the thesis.



# **Court Reports and Legal Abbreviations**

All N.L.R.	All Nigeria Law Reports
C.J.	Chief Justice
E.C.S.L.R.	Law Reports of East-Central State of Nigeria
FHC/L	Federal High Court, Lagos
F.S.C.	Federal Supreme Court
HC	High Court
H.L.	House of Lords
IMSLR	Imo State Law Reports
J.C.A.	Justice of the Court of Appeal
J.S.C.	Justice of the Supreme Court
KLR	Kings Law Reports
N.L.R.	Nigeria Law Report
NWLR	Nigerian Weekly Law Reports
R.S.L.R.	Rivers State Law Reports
S.C.	Supreme Court
SCNLR	Supreme Court of Nigeria Law Reports

# Table of Court Cases

## Nigerian Cases

	Section of the thesis
Adediran v. Interland Transport [1991] 9 NWLR .....	3, 6
Adesanya v. President of the Federal Republic of Nigeria [1981] 1 All N.L.R. ....	6
Adizua v. Agip Unreported Suit No. HOG2297, Imo State HC .....	6
Adhemove v. Shell-BP Unreported Suit No. UHC 12/70, Ughelli HC .....	6
Adomba v. Odiesi 1 RSLR (1980) .....	3, 5
Agbai v. Okogbue [1991] 7 NWLR .....	3
Aghenghen v. Waghoreghor (1974) All NLR .....	3, 4
Amos v. Shell-BP 4 ECSLR .....	6
Anare v. Shell Unreported Suit No. HCB/35/89, Delta State HC .....	1, 6
Chinda v. Shell-BP (1974) 2 RSLR .....	4, 5, 6
Douglas v. Shell Unreported Suit No. FHC/L/CS/573/96 .....	3
Eboigbe v. NNPC (1994) 10 KLR .....	6
Elf v. Sillo [1994] 6 NWLR .....	6
Eze v. Agip (1979) IMSLR .....	4
Eze v. Okwosha 1 IMSLR (1977) .....	5
Ereku v. the Military Governor of Mid-Western State (1974) 10 S.C. ....	3
Fawehinmi v. Abacha [1996] 9 NWLR .....	3
Fawehinmi v. Akilu [1987] 4 NWLR .....	6
Fawehinmi v. Aminu Unreported Suit No. FHC/L/CS/54/92 .....	6
Fufeyin v. Shell-BP (1978) 2 ANSLR .....	6
Gardline Shipping v. Joshua Unreported Suit No. FHC/L/CS/1273/96 .....	6
Geosource v. Biragbara [1997] 5 NWLR .....	4, 6
Guri v. Hadejia Native Authority (1959) 4 F.S.C. ....	3
Horsfall v. Shell-BP (1974) 2 RSLR .....	6
Idundun v. Okumagba (1976) 9 & 10 S.C. ....	3
Irou v. Shell-BP Unreported Suit No. W/89/71, Warri HC .....	6
Mon v. Shell-BP (1970-1972) I R.S.L.R. ....	6
Nvogoro v. Shell-BP 2 RSLR (1973) .....	6
Nwadiaro v. Shell [1990] 5 NWLR .....	5, 6
Nzekwu v. Attorney-General East-Central State (1972) All N.L.R. ....	3, 5

Odim v. Shell-BP (1974) 2 RSLR .....	6
Ogiale v. Shell [1997] 1 NWLR .....	5, 6
Ogulu v. Shell-BP (1975/76) R.S.L.R. ....	5
Okorie v. Seismograph Service (1975) ECSLR .....	6
Okwuosa v. Adizua 1 IMSLR (1977) .....	3
Otuedon v. Olughor [1997] 9 NWLR .....	5
Seismograph Service v. Akporuovo (1974) All N.L.R. ....	6
Seismograph Service v. Mark [1993] 7 NWLR .....	5, 6
Seismograph Service v. Ogbeni (1976) 4 S.C. ....	6
Seismograph Service v. Onokpasa (1972) All NLR .....	5, 6
Shell v. Enoch [1992] 8 NWLR .....	6
Shell v. Farah [1995] 3 NWLR .....	1, 3, 4, 5, 6, 7
Shell v. Isaiah [1997] 6 NWLR .....	3, 4, 5, 6
Shell v. Otoko [1990] 6 NWLR .....	6
Shell v. Tiebo VII [1996] 4 NWLR .....	4, 6
Shell v. Udi [1996] 6 NWLR .....	6
Shell v. Uzoaru [1994] 9 NWLR .....	6
Shell-BP v. Abedi (1974) 1 All NLR .....	3
Shell-BP v. Cole (1978) 3 S.C. ....	6
Shell-BP v. Uoro [1960] SCNLR .....	5
Tijani v. Secretary of Southern Nigeria (1923), 4 N.L.R. 18 .....	3
Umudje v. Shell-BP 5 ECSLR .....	5, 6
X.M.Federal Limited v. Shell Unreported Suit No. FHC/L/CS/849/95 .....	2

## English Case

Rylands v. Fletcher (1868) L.R. 3 H.L. 330 .....	6
--	---

# Table of Statutes

## Nigerian Statutes

	Section of the thesis
African Charter on Human and People's Rights (Ratification and Enforcement) Act 1983 (Cap 10, <i>Laws of the Federation of Nigeria</i> , 1990) .....	3
Associated Gas Re-injection Act 1979 (Cap 26, <i>Laws of the Federation of Nigeria</i> , 1990) .....	3
Associated Gas Re-injection (Amendment) Act 1985 .....	3
Constitution (Suspension and Modification) Decree No.107 of 1993 .....	3, 4, 6
Environmental Impact Assessment (EIA) Decree No.86 of 1992 .....	3, 6
Federal Environmental Protection Agency (FEPA) Act 1988 (Cap 131, <i>Laws of the Federation of Nigeria</i> , 1990) .....	1, 3, 4
Federal High Court (Amendment) Decree No. 60 of 1991 .....	3
Land Use Act 1978 (Cap 202, <i>Laws of the Federation of Nigeria</i> , 1990) .....	3, 4, 5
Merchant Shipping Act (Cap 224, <i>Laws of the Federation of Nigeria</i> , 1990) .....	6
Mineral Oil Ordinance No.17 of 1914 .....	2
Mining Regulation (Oil) Ordinance 1907 of Southern Nigeria .....	2
Nigerian National Oil Corporation (NNOC) Act No.18 of 1971 .....	2
Nigerian National Petroleum Corporation (NNPC) Act 1977 (Cap 320, <i>Laws of the Federation of Nigeria</i> , 1990) .....	2, 6
Oil Pipelines Act 1956 (Cap 338, <i>Laws of the Federation of Nigeria</i> , 1990) .....	2, 3, 5, 6
Oil in Navigable Waters Act 1968 (Cap 337, <i>Laws of the Federation of Nigeria</i> , 1990) .....	3
OMPADEC Act 1992 .....	4
Petroleum Act 1969 (Cap 350, <i>Laws of the Federation of Nigeria</i> , 1990) .....	1, 2, 3, 4, 5, 6
Petroleum (Amendment) Decree No.23 of 1996 .....	2
Petroleum (Drilling and Production) Regulations 1969 .....	3
Petroleum Production and Distribution Anti-Sabotage Decree No.35 of 1975 .....	3
Petroleum Profits Tax (Amendment) Decree 1967 .....	2
Public Lands Acquisition Act 1917 .....	3
Public Lands Acquisition (Miscellaneous Provisions) Act No.33 of 1976 .....	6
Public Lands Acquisition Law (Amendment) Edict [of Mid-Western State] 1972 .....	3
Public Lands Acquisition Law (Cap 105, <i>Laws of Western Nigeria</i> , 1959) .....	3
Public Lands Ordinance 1876 .....	3
Special Tribunal (Miscellaneous Offences) Decree No.20 of 1984 .....	3
Special Tribunal (Miscellaneous Offences) Amendment Decree 1986 .....	3

# Section 1: Introduction and Methodology

## 1.1. Introduction

This thesis analyses the legal disputes between oil companies and village communities in Nigeria. We place these disputes in relation to the constraints faced by litigants, the oil activity externalities leading to conflicts and the legal principles governing disputes, and attempt to derive conclusions relevant to the academic community. The thesis has three main aims.

First, the thesis is an attempt to provide a detailed analysis of the nature of legal disputes between oil companies and village communities in Nigeria, given the dynamic processes of legal change in a developing society such as that of Nigeria. In the last one or two decades, oil related litigation has increased in frequency. Chevron alone, for instance, was involved in over 200 pending court cases in Nigeria in early 1998, while the company reportedly only had up to 50 cases in the whole of the 1980s.<sup>1</sup> An important factor in the rise in litigation against multinational oil companies appears to have been the increased prospect of success for litigants as well as substantially higher compensation payments than before. In the 1990s, a number of high profile cases have been won by village communities, notably *Shell v. Farah*<sup>2</sup>, in which ca. 4.6 million Naira (ca. US\$

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<sup>1</sup> Personal interview with Ned 'Temi Mojuetan, attorney at the Law & Contracts Department of Chevron (Lagos, March 1998).

<sup>2</sup> [1995] 3 NWLR.

210,000 at the official exchange rate) was awarded as damages to a community.<sup>3</sup> The Farah case and other lawsuits appear to have been brought about by legal changes. These may have benefited village communities, albeit litigants may still face problems in bringing claims. We believe that legal disputes in the Nigerian oil industry, particularly in the light of their transformation, deserve to be the focus of an academic study.

Second, the study of litigation is aimed at serving as a window to an understanding of social conflicts between village communities and oil companies. Litigation typically evolves from individual and collective social conflicts. It echoes, rather than anticipates, changing situations and changing institutions. Before they can act, courts have to wait until conflicts arise and litigants file their lawsuits. In the words of Tocqueville, *'there is nothing naturally active about judicial power; to act, it must be set in motion'* (quoted in Hall 1989, 109). Writing on the development of American law, Hall has argued that issues of economic development set the judiciary 'in motion' as they bring about a dramatic rise in the demands placed on judiciaries. According to this view, the business of the courts mirrors the economic and social changes brought by economic development, while judges play a part in allocating the costs, risks and benefits of this development (Hall 1989). By implication, an analysis of litigation may, therefore, mirror the economic and social dynamic in relation to disputes between oil companies and village communities in Nigeria. In this context, such an investigation may throw some light on the social relations in Nigerian society.

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<sup>3</sup> In a number of other recent oil related cases, a higher compensation award was awarded to those affected by oil operations. For instance, in *Anare v. Shell* Unreported Suit No. HCB/35/89 in Delta State HC, a number of village communities were awarded 30 million Naira (US\$ 1,370,000 at the official exchange rate). However, the Farah case was an important legal precedent.

Third, the thesis is aimed at making a contribution to the research and the debate on the role of multinational companies in developing countries and on the day-to-day operations of African legal systems. While numerous studies have addressed the role of multinational business, our analysis is motivated by the perception of a paucity of studies on the interactions between those affected by business operations and the companies, particularly in the field of litigation. Our analysis is also motivated by a perceived lack of studies on the day-to-day operations of African legal systems. Above all, there appears to be a gap in the academic writing on the Nigerian oil industry in terms of a socio-legal analysis of legal disputes between oil companies and village communities (see sub-section 1.2. below). This thesis is an attempt to fill this gap.

The framework of analysis in this project is provided by the contemporary Nigerian legal system. This includes an examination of the evidence on oil related litigation available, including exemplary cases from Nigerian courts and a survey of 154 Nigerian legal practitioners, which illustrates the conflicts between oil companies and communities and elucidates the relevant issues. An analysis of a survey of Nigerian lawyers is aimed at evaluating the constraints and opportunities faced by potential and actual litigants in oil related litigation which can either encourage or discourage litigants from engaging in litigation. Focusing on issues such as oil spills and compensation payments for land acquisition, factual evidence from court cases illustrates the impact of oil exploration and production on village communities including the resulting environmental damage with a view to identifying the sources of conflict between oil companies and the local populace. A detailed analysis of litigation reveals the principles of tort law upon which oil related cases are based, the legal defences employed by oil

companies and legal innovations in oil related cases. The discussion of legal change forms a key part in this analysis.

## **1.2. Literature on Nigeria's Oil Industry**

Our analysis is guided by the perception of a gap in the literature on the Nigerian oil industry in terms of legal disputes between oil companies and village communities. The literature on the Nigerian oil industry is extensive because of the industry's long history and its importance for the country's economy. However, it does not, on the whole, address the issue of field operations and the resultant legal conflicts.

The first serious scholarly study on the Nigerian oil industry was undertaken by Schätzl (1969) who focused on the evolution of the industry's operations in the light of the importance of oil for the country's future energy needs. A second study by Pearson (1970) has concentrated on the impact of the oil industry on the Nigerian economy and investment patterns. A number of other studies have followed, most of which have dealt with the impact of the oil industry on Nigeria's economic development and the business side of oil operations (Emembolu 1975; Odofin 1979; Onoh 1983; Soremekun 1995; Eromosele 1997) and the impact of the oil industry on the country's political development (Turner 1977; Ihonvbere and Shaw 1988). The most important study to-date was Sarah Ahmad Khan's pathbreaking book on the Nigerian oil industry entitled *'Nigeria: The Political Economy of Oil'* (1994). Khan's study focuses on business operations. It discusses the government's petroleum policy, the commercial activities of the oil companies and the nature of oil prices, among other issues.



While these studies have provided a more or less detailed analysis of business operations as well as economic and political development, they have tended to neglect the effects of oil companies on village communities and the role of the legal system as mediator and adjudicator. Some of these issues have been addressed by a small set of studies by both Nigerian and British authors. Ogbonna (1979) has studied the geographic consequences of the oil industry, pointing to the combined environmental consequences of oil operations in the oil producing areas. A number of other studies have noted the environmental and social impact of oil operations (Ikpah 1981, Ashton-Jones 1998).

In this context, two studies by Peter Usutu Onyige (1979) and Daniel Omoweh (1994) are particularly relevant to conflicts between oil companies and village communities. Both Onyige and Omoweh have analysed the impact of oil operations on the local populace, based on their own field studies in the oil producing areas.<sup>4</sup> The strength of their work has been in the analysis of interactions between oil companies and communities, which had been largely neglected in other studies. Onyige has been able to portray some aspects of the impact of oil operations on village communities and the attitudes of villagers towards oil companies. Omoweh meanwhile elucidated how the mechanics of the oil industry's field operations such as seismic surveys and drilling affect village communities. He described some of the resulting conflicts such as popular protests and compensation claims for damage.

However, both studies by Onyige and Omoweh have some deficiencies. Onyige's study lacks a social science basis and hence does not allow for a consistent analysis of the

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<sup>4</sup> Onyige investigated the operations of Elf and Agip, while Omoweh concentrated on Shell's Nigerian operations.

data. His major asset - 305 questionnaires returned by villagers - has been under-utilised within the framework of the study which provided little beyond the use of frequency distributions for some of the replies. Omoweh's analysis is based on biased assumptions about the relationship between the State, oil companies and communities, which precludes a more balanced study of the subject. By emphasising colonialism as the root of economic underdevelopment in the oil producing areas, Omoweh's essentially Marxist outlook presupposes an adverse role for the oil companies from the outset before presenting empirical evidence. In addition, the adverse impact of oil operations may have been overemphasised by the author who claimed, for instance, that Shell was causing a land scarcity crisis in the oil producing areas without Omoweh having investigated other related factors. More importantly, neither Onyige's nor Omoweh's studies discuss the modern legal framework of community disputes in any detail.

There are a number of important studies by legal scholars on the role of law in relation to the Nigerian oil industry. Much of this literature, however, has largely failed to analyse the interaction between Nigerian petroleum legislation and the environmental and other laws related to field operations. This is due to an almost exclusive focus on either petroleum statutes or the environmental and other statutes related to field operations but not on both simultaneously. Neither of the two approaches has provided a complete picture of the legal framework in the oil industry. Major studies of Nigerian petroleum legislation by legal scholars, who have focused on the legal framework of the oil industry's commercial activities (Etikerentse 1985; Olisa 1987; Atsegbua 1993), have provided a detailed analysis of substantive law, particularly the provisions of the Petroleum Act 1969. Meanwhile, they have largely ignored either community-relevant

environmental or land legislation or the legal framework in relation to oil operations in village communities. Those legal scholars, who have discussed environmental law and land law in relation to the oil industry (Omotola 1990), meanwhile, have often failed to discuss the rationales behind the commercial activities of the oil industry.

While many of these Nigerian legal studies have had strengths with regard to their analysis of the legal framework of multinational oil operations, they rarely address the socio-legal problems such as the actual enforcement of legislation or barriers to justice faced by village communities. A number of legal scholars, most notably Adewale (1989), have discussed socio-legal constraints in oil related litigation in articles or scholarly papers. However, these studies have tended to confine their analysis to the formal legal problems involved. This is because legal scholars who engage in discussing legislation and litigation relating to village communities have often analysed law in isolation from social reality. Prototypical for this approach was an article on the relevance of the Federal Environmental Protection Agency (FEPA) Act to the oil industry by Guobadia (1993). Guobadia's article included a very brief sub-section on the enforcement of the Act, which was limited to a discussion of the parts of the legal text that deal with enforcement, but which failed to mention actual enforcement.

What emerges from the above survey of literature on the Nigerian oil industry and the legal framework of community disputes is that there is a lack of a socio-legal study on the oil industry in Nigeria, which provides a detailed analysis of the legal disputes between oil companies and village communities in relation to the institutional framework which mediates and adjudicates disputes. Failure to properly analyse the legal framework, especially in the light of its transformation, is probably the greatest, if not the only, gap in

the analysis of the interactions between oil companies and village communities. As indicated earlier, the objective of the thesis is to fill this gap within the limitations of the available material.

One of the reasons for the absence of a socio-legal study of oil related community conflicts may be the prevailing ideas with regards to the nature of the state and with regards to social change in Africa, which rely heavily on a macro-analytical framework. Take the example of Omoweh's study mentioned above. Based on a macro-analytical approach to the state, Omoweh ignores the dynamic processes, which have governed Nigerian legal development. This fact can be explained in part by Omoweh's view of the state as a 'monolithic block', which has led him to the misleading impression that the judiciary, as an integral part of the state structures, lacks a dynamic of its own. In his most recent study, Omoweh (1998) states: *'Since the judiciary is part of the state structure, the law court cannot be the last hope of the people in the rural oil areas in the on-going protests against the state and the oil companies over land crisis'*. This mechanistic view fails to make the distinction between political decisions at the apex of the State, on the one hand, and dynamic processes at work within the judiciary or other public bodies, on the other. This problem is characteristic of the general African Studies literature which often fails to make a distinction between the different spheres of the state apparatus.<sup>5</sup>

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<sup>5</sup> As a typical exponent of this view, William D. Graf (1988, 209) has commented: *'Contrary to received notions about a separate branch of government, the judicature (the Nigerian version of 'judiciary') is related to and resembles the state bureaucracy. Like it, the judicature performs public functions'*. In contrast to several other scholars, Graf observed that the courts in Africa are struggling to maintain a relative autonomy. Graf (1988, 211) has recognised that *'unfortunately, the comparatively large corpus of works on the structures and functions of the judiciary has not been matched by studies of its actual operation and political significance'*.

A further reason for a literature gap may have been the prevailing ideas about social change in Africa among scholars. As Whitaker (1991, 357) has pointed out, the common feature of ideas about social change was that the essential impetus to change was assumed to be external. In particular, theories of 'development' and 'dependency' tend to concern themselves primarily with explaining the influence of Western institutions, values and power in the African context. By implication, Africans are said to be merely able to succumb, evade or obstruct the process of change, not necessarily influence it. Whitaker, on the other hand, has argued that the transformation '*signifies the autonomous capacity of African social actors to generate significant change*'. The reluctance of African scholars to study this 'autonomous capacity' has led to mechanistic rather than dynamic theories of change and thus to a failure to understand the underlying causes of the transformation of law, which can be found within the legal system and its social environment. In addition, as Whitaker (1991, 357-358) has pointed out, the scholars' use of dichotomised concepts - development/underdevelopment, radical/conservative, modern/traditional - is also unhelpful to the study of change in Africa.

The formal legal approach has been unhelpful to the study of change and the legal process in Africa because it fails to take account of socio-economic influences on legal decisions and the more dynamic aspects of the legal framework. The emphasis of African scholars on the formal legal approach may have partly been responsible for a lack of awareness of the day-to-day operations of legal systems. In contrast, a socio-legal approach can provide a more holistic picture of the disputes between oil companies and village communities, which is not offered by either a purely socio-economic or a purely

legal study. This approach precludes to some degree the use of the macro-analytical analysis of disputes between oil companies and village communities. A macro-analytical analysis may not be able to capture the complexity of the legal process and the dynamic processes of change which may be slow and subtle. By implication, therefore, this thesis is based on the assumption that a micro-analytical study is needed to investigate the nature of the legal process. A micro-analytical study could take different approaches. Our approach combines the analysis of concrete institutional arrangements with an investigation of personal experiences and perception of the legal system.

### **1.3. Methodology and Structure**

On the most basic level, our methodology combines three main elements: an investigation of the context of oil operations, a discussion of a lawyers' survey and a detailed analysis of oil related litigation.

We are of the view that a discussion of the context of oil operations is necessary in order to provide explanations which are both causally and meaningfully adequate in the Weberian sense. To this purpose, the thesis sets out by presenting the political and legal context which forms sections two and three.

Section two, which briefly discusses the making of the Nigerian oil industry and the government petroleum policy, serves as a basic background to our subsequent analysis of legal disputes. Furthermore, this section investigates whether the Nigerian state is biased in favour of oil companies or village communities or whether it can be considered neutral.

A discussion of the making of Nigeria's oil industry prepares the ground for a discussion of the legal system, which is at the core of the thesis. Section three provides an introduction to the legal framework by discussing the formal legal institutions and oil related legislation. Issues discussed include the English Common Law, Nigerian customary law and the court system. A discussion of the legislative framework consists of petroleum legislation, environmental legislation and other legal provisions including land law, and legislative provisions for compensation payments to those affected by oil operations.

The contextual sections are followed by the statistical results of a survey of 154 Nigerian lawyers from Lagos, Nigeria's commercial centre, and from Port Harcourt, the main centre of the Nigerian oil industry which forms section four, one of the two core sections of the thesis. The survey reflects a formidable pool of expert knowledge on oil operations since as many as 128 lawyers surveyed reported that they had previously had some professional contact with the oil industry, of which 85 have previously acted as legal counsel for an oil company, its subsidiary or a sub-contractor and 97 have previously acted as counsel in a lawsuit against an oil company (survey methodology will be discussed in greater detail in section four).

The survey respondents were asked about their personal knowledge of the legal proceedings and their experiences with oil companies in court. The survey allows for the use of frequency distributions and non-parametric tests to investigate the quality of the Nigerian legal system by analysing answers to questions on issues such as the enforcement of court orders, extra-judicial pressures from outside institutions and problems of access to courts. Our survey analysis indicates that the judiciary and the legal



process may be more biased in favour of oil companies rather than the opposing litigants in oil related litigation.

The survey sets the stage for the analysis of 68 court cases involving disputes arising from oil operations on the ground. The collection of cases was aided by Nigerian legal professionals, a Nigerian judge and the author's judgment. Reported cases were gathered from publicly available law reports, while a number of unreported cases were obtained from practising lawyers in Nigeria. The sampling of cases was arbitrary to some extent because it was impossible to obtain all past judgments involving oil companies in Nigeria. Cases that have been reported may not necessarily be considered typical as they were published in a law report solely on the basis of involving a new and unfamiliar legal precedent. The selection of unreported cases utilised in the thesis, moreover, might not necessarily be considered typical because it relied on personal contact with legal practitioners in Nigeria. Nonetheless, one advantage of Nigerian court cases is that case transcripts are very extensive, presenting a host of evidence, expert material and legal analysis. The reliance on personal contact with Nigerian lawyers dealing with oil related cases ensured that the most important legal precedents in oil related litigation were obtained.

Using court judgments on topics such as oil spills and seismic surveys, section five assesses the externalities arising from oil exploration and production on the ground including the resulting environmental damage. Rather than using court judgments as legal material, we utilise them as a source of factual evidence of the impact of oil operations on village communities. This enables us to identify some of the sources of conflicts between



oil companies and village communities. The use of factual evidence from court cases serves as a window to an understanding of social conflicts in the Nigerian oil industry.

Section six, the second core section of the thesis, provides a detailed discussion of the court cases in terms of substantive law. The section discusses the legal principles of tort law which are used as a basis for the court cases. A discussion of the legal liability under tort law and the legal defences used by oil companies exemplifies that litigation against oil companies faces severe obstacles. However, in the last decade or so, communities have been given more favourable judgments in court and some communities have been awarded relatively high compensation payments for oil company damage. This legal change, the existence of which constitutes an important finding of the thesis, is discussed in some detail and potential reasons are given to account for it.

Section seven draws the findings of the entire thesis together by re-assessing the methods used and the evidence presented. This is followed by suggestions for future research.

## **Section 2: The Making of the Nigerian Oil Industry - Oil and the Nigerian State**

### **2.1. Introduction**

This section of the thesis, which briefly discusses the making of the Nigerian oil industry and the government petroleum policy, serves as a basic background to our subsequent analysis of legal disputes. In order to fully understand conflicts between oil companies and village communities in Nigeria, it is instructive to examine the relationship between the foreign oil companies and the state in Nigeria. Foreign oil companies depend on the Nigerian state. The state provides access to the country's natural resources through the granting of oil licences as well as providing the regulatory framework such as petroleum tax and royalty, which defines the terms and conditions of operations and the financial incentives for oil companies. The state can impose minimum drilling obligations, price controls, environmental protection measures, control over the development of oil fields (including restrictions on production) and, in some cases, it can expropriate the assets of oil companies or cancel contracts. Political decisions may directly influence the day-to-day operations of the oil industry, particularly if the state has a shareholding interest in joint-ventures with private oil companies as in the case of Nigeria. The state provides security protection for companies. Last but not least, the judiciary is part of the state institutions, thus legal disputes involving oil companies are regulated by the state.

The nature of the state and its institutions is, therefore, relevant to the operations of oil companies and the resulting litigation.

Our discussion of the political background of oil operations in this section is not exhaustive. Other scholars (e.g. Turner 1977; Ihonvbere and Shaw 1988) have provided a much more extensive account of Nigeria's political economy of oil. In this section, we attempt to investigate a different angle to this discussion by exploring the link between political decision-making and community conflicts in the oil producing areas.

We conduct this analysis by examining the political context within which community conflicts in the oil producing areas have evolved. Our main concern is whether the Nigerian state is biased in favour of oil companies or village communities or whether it can be considered neutral. A number of scholars such as Terisa Turner (1976, 1977, 1978) have argued that the Nigerian state is predisposed in favour of oil interests. If it is assumed that the state is prejudiced in favour of oil companies, it has to be assumed that the state would restrict litigation against foreign investors. In order to understand the litigation between oil companies and village communities, it is thus necessary to investigate the bias of the Nigerian state in favour of foreign oil companies. This section of the thesis examines the basic elements of Nigeria's political economy as they pertain to the relationship between the state and foreign oil companies as to the possibility of the state supporting or blocking litigation.

Our material is organised as follows. First, we discuss the colonial origins of the oil industry, including the colonial oil related legislation. Then we examine the evolution

of Nigeria's oil industry after independence in 1960. We conclude with an assessment of the political economy of oil in Nigeria and community protests against oil companies.

## **2.2. Colonial Origins of Nigeria's Oil**

Until 1960, Nigeria was a British colony. In 1938, a joint-venture between the two major British oil companies Shell and BP was granted a licence to explore oil covering the entire territory of Nigeria.<sup>1</sup> This gave them a monopoly over oil exploration in the country. Shell-BP began its drilling activities from 1951.<sup>2</sup> In 1953, some 450 barrels of oil were discovered at the Akata-1 well. In 1956, the Shell-BP venture found oil in commercial quantities for the first time at Oloibiri. Encouraged by early successes, Shell-BP greatly expanded its drilling activities between 1958 and 1960. As a result of expanded operations, it was able to make important discoveries, of which the most promising one was the Bomu oil field in the Ogoni area in 1958. Exports of crude oil began in December 1957 (Shell-BP 1960).

Initially, Nigeria's economy was not dependent on oil. Other commodities, particularly agricultural exports such as palm oil and palm kernels as well as coal and tin, played a much greater role. However, the role of crude oil in Nigeria's export portfolio increased rapidly. By 1960, crude oil exports came to provide the bulk of the minerals exports. In 1960, 847,000 tons of crude oil were exported, compared with only 10,000

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<sup>1</sup> In 1937, Shell D'Arcy (later renamed Shell-BP) was formed as a joint-venture between Shell and Anglo-Iranian (British Petroleum from 1954) to operate in Nigeria. As a result of the Second World War, Shell D'Arcy withdrew from Nigeria in 1941. The company returned in 1946 to resume exploration work (Shell-BP 1960, 5).

<sup>2</sup> According to Shell's figures, 1959 was the peak year of drilling with 53 wells drilled by Shell-BP (see Appendix D, Table D.1.).

tons of tin and 2,000 tons of columbite (see Annex C, Table C.1.). Not surprisingly, by 1960, oil operations had come to play a greater role in government affairs. Petroleum matters were on the agenda of the Nigerian Council of Ministers in 6 out of 43 meetings and in 10 out of 31 meetings in 1958 and in 1959 respectively.<sup>3</sup>

From an international perspective, however, Nigeria's initial oil production was not substantial. In 1960, at the time of Nigeria's independence, four oil producing countries of the British Commonwealth - Canada, Qatar, Brunei and Trinidad - produced more crude oil than Nigeria (see Appendix C, Table C.2.). In percentage terms, Nigeria provided only 1.8% of the crude oil production of the Commonwealth in 1960. This had changed by 1971 when Nigeria had become the largest Commonwealth oil producing country with a production of 74,100,000 long tons, which amounted to 41.1% of the total crude oil production of the Commonwealth. By the end of the colonial era, therefore, the significance of Nigeria's oil industry did not lie so much in the actual oil production but rather in its potential for future expansion.

On the eve of Nigeria's independence in 1960, Shell and BP were the dominant oil companies in the country and Shell (Shell-BP until 1979) has remained the dominant company in the Nigerian oil industry from the colonial era to-date.<sup>4</sup> However, by the early 1960s, Shell-BP had been joined by competitors. Until 1951, the venture had exclusive concessions over all Nigerian oil resources. In that year, the original exploration

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<sup>3</sup> Conclusions of Meetings of the Council of Ministers 1958 and 1959, CO1039/86, CO1039/87, CO1039/107, CO1039/108, Public Record Office (PRO), Kew, London. Despite an increase in oil related discussions, other policy matters such as those on the Coal Corporation still took precedence over the oil industry. Petroleum policy was addressed in only 7 memos of the Council in 1958 and in 18 memos in 1959, compared with a total of almost 700 Government memos in 1959 alone. The greater number of discussions on petroleum matters in 1959 stemmed primarily from the need to regulate petroleum legislation before the end of the colonial era and to issue permits for oil pipelines.

<sup>4</sup> The Nigerian assets of BP were nationalised in 1979 (see sub-section 2.6. below).

licence covering 357,000 square miles was reduced to an area of 58,000 square miles in Southern Nigeria. Between 1955 and 1957, Shell-BP's exploration area was further reduced to 40,000 square miles, mainly in the Niger Delta (Schätzl 1969, 1). The choice of exploration areas for newcomers in Nigeria was limited to areas previously abandoned by Shell-BP. Attracted by Shell-BP's successes and encouraged by the British Government, other oil companies were interested in exploration work because of the suspected oil wealth. From the late 1950s, concessions were granted to a number of non-British oil companies. Socony-Vacuum (later Mobil) obtained its first oil exploration licence in 1955, Tennessee (also known as Tenneco) in 1960, Gulf (later Chevron) in 1961, American Overseas (also known as Amoseas) in 1961, Agip<sup>5</sup> in 1962, SAFRAP<sup>6</sup> (later Elf) in 1962, Phillips in 1965 and Esso<sup>7</sup> in 1965 (Schätzl 1969, 4-5; Whiteman 1982, 340-342). As a result, nine foreign oil companies were engaged in exploration in Nigeria by 1965.

All six major foreign oil companies, which dominate the Nigerian oil industry today (Shell, Mobil, Chevron, Elf, Agip and Texaco), were already present in Nigeria by the early 1960s and were all producing by 1971 (see Appendix D, Table D.8.). All newcomers were confined to market niches left behind by Shell-BP. The most important of these market niches were the oil resources in Nigeria's offshore area. Shell-BP had to compete with several other oil companies in offshore exploration from the start. In

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<sup>5</sup> Affiliate of the Italian Government owned oil company ENI.

<sup>6</sup> SAFRAP (Societe Anonyme Française des Recherches et d'Exploitation de Petrole) Nigeria Ltd was jointly owned by SAFRAP (50%), RAP (Regie Autonome des Petroles) (40%) and SOGERAP (Societe de Gestion des Participants de la RAP) (10%). The equity share of the French Government in SAFRAP and RAP was 64% and 100% respectively.

<sup>7</sup> Subsidiary of the US oil company Exxon.

respect to new licences, the Council of Ministers in 1959 agreed '*that not more than four blocks of 1,000 square miles each should be granted in the Continental Shelf area to any one company.*'<sup>8</sup> This early diversification explains in part why Shell was not able to extend its dominant position in onshore operations to those offshore.<sup>9</sup> Almost immediately after the award of offshore licences in December 1961, Gulf (later Chevron) discovered the Okan oil field, the first commercial field to be found on Nigeria's continental shelf, which began to produce oil in 1965 (Whiteman 1982, 315). Gulf thus became established in offshore operations owing to its early discoveries and remained the second largest oil producing company in Nigeria into the early 1990s. Mobil made its first discovery in 1964 and began production from the offshore Idaho field in 1970 (<http://www.mobil.com/world/nigeria/mobnigeria.html>, January 1998). Mobil remained the third largest oil company in Nigeria until 1992 when it overtook Chevron to become the second largest. Texaco/California Asiatic made its first offshore discovery in 1963 (Madujibeya 1975, 3). Due to Shell's early focus on onshore areas located close to human settlements, community conflicts in Nigeria resulted in significantly more litigation against the company and its sub-contractors to-date than for oil companies operating offshore such as Mobil and Chevron.

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<sup>8</sup> Conclusions of the 19th Meeting of the Council of Ministers (22 July 1959), File CO1039/108, PRO.

<sup>9</sup> Of the 314 successful oil and gas discoveries made by 1975, 73% were in onshore areas and 27% in offshore areas. Shell-BP accounted for 77% of onshore discoveries, while three US companies - Gulf, Mobil and Texaco/California Asiatic - accounted for 76% of offshore discoveries (Madujibeya 1975, 3).



## 2.3. Oil Related Legal Arrangements under Colonial Rule

For Shell and BP to expand oil operations in Nigeria, a sympathetic system of oil licensing and a business conducive legal framework were necessary. Following Nigeria's unification in 1914, a key piece of petroleum legislation was passed in the form of the Mineral Oil Ordinance No.17 of 1914, which was amended in 1925, 1950 and 1958.<sup>10</sup> The Mineral Oil Ordinance was ostensibly passed '*to regulate the right to search for, win and work mineral oils*' (Ajomo 1976; Etikerentse 1985, 1).

One of the main provisions of the 1914 Ordinance was that only British oil companies were permitted to obtain oil licences in Nigeria.<sup>11</sup> Despite its explicit wording, this provision could be circumvented, if the colonial administration was willing to do so.<sup>12</sup> When Socony-Vacuum Oil (later Mobil) - a US company - was allowed into Nigeria in 1955, they formed a locally registered company with a British chairman and a board of directors, of whom the majority were British citizens. Since the investment of Socony-Vacuum was welcomed and even encouraged by the British Government, no political objections were raised.<sup>13</sup> The provision of the Ordinance, which disqualified non-British companies, was eventually repealed in 1958 in order to attract US investment.<sup>14</sup>

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<sup>10</sup> Until 1914, oil companies in Nigeria operated under the Mining Regulation (Oil) Ordinance 1907 of Southern Nigeria, which was amended by Mining Regulation (Oil) Ordinances 1907 and 1909.

<sup>11</sup> Nigeria Mineral Oils Ordinance (Colonial Mineral Ordinance No.17) of 1914, section 6(1)(a) stipulated that:  
*No lease or licence shall be granted except to a British subject or to a British company and its principal place of business within Her Majesty's dominions; The chairman and the managing director (in any) and the majority of the other directors of which are British subjects.*

<sup>12</sup> A similar provision, which formally disqualified non-British companies, existed under the Mining Regulation (Oil) Ordinance 1907, Section 15. However, the British authorities allowed the Nigerian Bitumen Company, a subsidiary of a German company and registered in Nigeria, to operate from 1907 to 1914.

<sup>13</sup> Reported in File CO 1029/255, PRO.

<sup>14</sup> Section 2 of the Mineral Oils (Amendment) Act 1958, reported in Atsegbua (1993, 8).



The main problem of colonial petroleum legislation under the Mineral Oil Ordinance and subsidiary legislation was that it did not prescribe the terms and conditions of oil operations. These terms and conditions were fixed by oil licences issued by the colonial government. Every licence set out the specific rights and obligations of the licence holder. An oil company had to apply for each licence separately. Once a licence was granted, the company had to fulfil the conditions and obligations proscribed by the licence and had to pay the stipulated fees. There were three types of licences: the oil exploration licence (OEL), the oil prospecting licence (OPL), and the oil mining lease (OML). In addition to these three types of licences, an oil company had to apply separately for a licence to build a pipeline under the Oil Pipelines Act 1956. At first, an OEL was granted, which allowed the oil company to explore, search and drill for oil but prohibited oil production. Once the OEL for an area expired, the same oil company could either surrender the exploration area or apply for an OPL for the area in question. The OPL allowed the company to explore, search and drill for oil as well as to produce oil. Once the OPL expired, the oil company could surrender the area or apply for an OML for the area in question. The OML was a long-term agreement between the company and the Government to produce oil. The specific terms and fees differed between OELs, OPLs and OMLs. The most distinctive provision of an OML was the exclusive privilege to produce oil in a specific area for a period of 30 years in land areas and territorial waters and of 40 years in the Niger Delta and the Continental Shelf (see Table 2.1.).

**Table 2.1. Selected Provisions of Oil Licences, August 1959**

Type of Right	Oil Exploration Licence (OEL) Non exclusive (areas north of latitude 7°N) £50 per year	Oil Prospecting Licence (OPL) Exclusive 2/- per square mile per year	Oil Mining Lease (OML) Exclusive 2/6d per acre for first year rising to 10/- in sixth and subsequent years
Area	Up to 10,000 sq. miles	Up to 2,000 sq. miles onshore or 1,000 sq. miles in the Continental Shelf areas	Any size approved by Government
Period	1 year	3 years	30 years
Renewal (land areas incl. territorial waters)	1 year (followed by 1 year at £50 premium)	2 years (on whole or part provided work done satisfactory to C.I.M.)	30 years
Period	1 year	4 years	40 years
Renewal (Niger Delta incl. Continental Shelf)	1 year (followed by 1 year at £50 premium)	3 years	40 years
Conditions	Explore and search by geological and/or geophysical means with topographical examination and drilling may be undertaken, no production of oil allowed.	1) Explore, search and drill for oil, carry out geological, geophysical and topographical work. 2) Carry away and dispose of oil. 3) Not later than the third year start training schemes for the technical training of Nigerian staff.	1) Search, bore-for, win and work all petroleum. 2) If not already started, a training scheme for technical training of staff must be started or contributed to.
Obligations	i) Commence geologically and/or geophysically to examine with reasonable dispatch and continue to do so. ii) Quarterly reports to D.G.S. and C.I.M. iii) Topographical and cadastral maps to Federal Surveys. iv) Samples to be given D.G.S. as required. Details any drilling to D.G.S. and C.I.M.	i) All reasonable dispatch commence and to continue examination geologically and by geophysical methods. ii) Within 6 months of date of grant commence seismic investigation and be continuous until drilling operations are commenced or licence determined. iii) Before the end of the third year have drilled a minimum of 12,000 feet and no well shall be less than 6,000 feet in depth. This obligation will be modified if one operator is granted two (or multiples thereof) concession areas when the single concession obligation will apply to each 2 areas in Continental Shelf. iv) Monthly drilling reports and quarterly progress reports to D.G.S. and C.I.M.	i) As clause 42 in Shell OML (work according to good oil-field practice) ii) Monthly drilling record to C.I.M. and D.G.S. iii) Quarterly progress report to C.I.M. and D.G.S. iv) Such other records as to production and exports as required by C.I.M.

Source: Circular Letter of A.C.F. Armstrong, Permanent Secretary in the Ministry of Lagos Affairs, Mines and Power to Shell-BP, Gulf, Pan American, Standard Oil, Mobil and California Exploration Company (4 August 1959), POWE 33/421, PRO.

An obvious and crucial explanation for Shell's dominance in Nigeria's oil industry is that Shell-BP held the majority of oil licences at independence. In January 1960 and in January 1962, the oil prospecting licences (OPLs) granted to Shell-BP under colonial rule had expired. By the terms of the OPLs, the venture had the right to take up to 50% of the area under oil mining leases (OMLs) for a period of 30 or 40 years.<sup>15</sup> Shell-BP, unaffected by competitors, was able to acquire 46 oil mining leases (OMLs) covering 15,000 square miles (approximately 38,850 sq kms) for 30 or 40 years in areas with the best geological indications for oil deposits (Schätzl 1969, 1). As a comparison, the area of the Niger Delta, where the bulk of Nigerian oil operations have taken place since, was recently estimated at only approximately 9,900 sq miles (25,640 sq km) or 66% of Shell-BP's licence area (Ashton-Jones 1998, 116).<sup>16</sup> The nature of the licensing process and the role played by Shell-BP within it enabled the company to pre-empt rivals by securing long-term leases in the most promising exploration areas. By 1960, Shell-BP had established its base in the oil-rich onshore areas of south-eastern Nigeria, which allowed Shell to retain a dominant position in Nigeria to-date. Shell's continuing dominance can explain why the company was involved in significantly more litigation in Nigeria than other oil companies operating onshore such as Agip and Elf.

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<sup>15</sup> Circular Letter of A.C.F. Armstrong, Permanent Secretary in the Ministry of Lagos Affairs, Mines and Power to Shell-BP, Gulf, Pan American, Standard Oil, Mobil and California Exploration Company (4 August 1959), POWE 33/421, PRO.

<sup>16</sup> The comparison between the area of Shell-BP's licences and the area of the Niger Delta merely serves to emphasise the substantial size of Shell-BP's holdings. In reality, Shell-BP had to surrender some licence areas in the Niger Delta when the company's OPLs had expired in 1960 and in 1962.

## **2.4. Evolution of Nigeria's Oil Industry after Independence**

From the start of oil production by Shell-BP in December 1957, Nigerian crude oil production was steadily expanding and, more recently, billions of dollars were invested into the development of gas production. From a level of 20,000 b/d (barrels/day) in 1960, Nigeria's oil production made a giant leap to well over 2,000,000 b/d today. In the 1960s, production was still rather insignificant but was increasing from 20,000 b/d in 1960 to 540,000 b/d in 1969.<sup>17</sup> From then, production was continuously increasing reaching over 2,000,000 b/d in 1973, a similar production level to the late 1990s. The expansion of Nigeria's oil production did not follow a linear trend. After a high point in 1974 and again in 1979, Nigeria's oil production had declined between 1980 and 1983 in line with the decline in world market demand (see Appendix C, Table C.3). In order to stimulate oil exploration and production, the Nigerian government introduced better financial terms for oil companies, especially the Memorandum of Understanding in 1986 (this will be shown in some detail later on). As profit margins and world-wide demand were rising, Nigerian oil production started to rise quickly from the late 1980s onwards. In the early 1990s, foreign oil companies have committed substantial investments to extend productive capacity in Nigeria which can account for a rise in production from 1992 onwards (Khan 1994, 55-56).

In percentage terms, Nigeria's share of world crude oil production rose from 0.03% in 1958 to 0.09% in 1960 to 0.35% in 1968. From then, Nigeria's share was rising enormously to 1.23% in 1969, to 2.25% in 1970, reaching 3.86% in 1974. In the 1980s,

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<sup>17</sup> The Civil War 1967-70 disrupted oil operations, but then production recovered and made a major leap from 540,000 b/d in 1969 to 1,530,000 b/d in 1971.

the country's share dropped to a low of 2.18% in 1983 and again 2.18% in 1987, rising to 3.16% in 1997 (see Appendix C, Table C.3.).

The destination of Nigeria's oil exports in terms of the world market fluctuated considerably over the years. In the first phase 1958-61, virtually the entire oil production was exported to Britain and the Netherlands, the home countries of Shell-BP. In the 1960s, new export markets were found in Western Europe, the US, Latin America, Africa and Japan. In the early 1970s, the US became the largest single buyer of Nigerian oil. In 1973, for example, over half of the Nigerian oil exports went to Western Europe, 27% to the US, 13% to the Caribbean and 5% to Japan (Madujibeya 1975, 5). The share of Nigerian oil exports to the US declined to 14.1% in 1984 and then peaked at 52.6% in 1989, following a decline of oil exports to Western Europe and Latin America as a result of the world-wide recession in the early 1980s.<sup>18</sup> By that time, the Nigerian oil exports to Japan had already almost disappeared. Increased production of North Sea oil in the 1980s also contributed to a decline of Nigerian oil exports to Western Europe (Khan 1994, 117-121).<sup>19</sup> The main exports markets for Nigerian oil remain the US and Western Europe, with a share of 45.2% and 41.0% of the total respectively in 1996 (see Appendix C, Table C.5.). France was the largest Western European importer of Nigerian oil, followed by Germany and the Netherlands (*OPEC Annual Statistical Bulletin* 1997).

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<sup>18</sup> In the early 1980s, Nigeria's total oil exports declined from 1,960,000 b/d in 1980 to a low of 935,000 b/d in 1983. The US exports reached their lowest point at 154,000 b/d in 1984, while Western European exports reached a lowest point in 1982 with 482,000 b/d. The decline in exports to Western Europe and Latin America was, on the whole, more significant than the decline of US exports (Khan 1994, 118-119).

<sup>19</sup> The oil production in the North Sea played a significant role for the marketing of Nigeria's oil because the Nigerian crudes are similar in quality to North Sea crudes, their prices are related to the crude called Brent, so they compete directly with crudes in the North Sea (Khan 1994, 101).

In addition to oil, gas production was becoming increasingly important to Nigeria. In an international comparison, Nigerian gas production is still relatively insignificant (see Appendix C, Table C.6.). In 1997, for example, the Nigerian gas production was roughly 4.3 million tonnes oil equivalent, which was equal to roughly 30 million barrels of crude oil or, in other words, equal to approximately only two weeks of the Nigerian oil production at 1997 levels.<sup>20</sup> While gas production was rather insignificant, the country's known gas reserves in 1997 amounted to 2.1% of the world total (*BP Statistical Review of World Energy* 1998). Until recently, companies were unwilling to exploit gas because there was no domestic market for gas in Nigeria, exports of gas were difficult and profit margins were low.<sup>21</sup> In the late 1990s, however, the Nigerian government gave the oil companies favourable fiscal incentives for gas exploitation, which can explain an upsurge in fresh investments into gas related projects.<sup>22</sup> Shell together with Agip and Elf engaged in the Nigeria Liquefied Natural Gas (NLNG) Project worth ca. US\$ 3.8 billion. Chevron launched its US\$ 550 million Escravos Gas Project, while Mobil launched a natural gas liquids (NGL) project worth over US\$ 800 million (*AFP*, 17 August 1998). When the new projects start producing, Nigeria's gas production is bound to expand significantly but Nigeria has so far remained primarily an oil producing country rather than a gas producing country.

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<sup>20</sup> 1 million tonnes oil equivalent of gas is equivalent to 7.33 million barrels of oil.

<sup>21</sup> In 1965, BP discovered a large gas field in the North Sea. By then, it was clear that the European market for gas could be well served by North Sea, Libyan and Algerian gas and did not provide real opportunities for Nigerian gas exports. Difficulties with securing markets for gas and the price attached by foreign companies to gas were important obstacles to gas utilisation (Turner 1977, 171).

<sup>22</sup> Among other incentives to gas projects, companies involved in the exploitation of natural gas have been taxed under the Companies Income Tax rate of 30% rather than under the nominal Petroleum Profits Tax of 85% (as amended by the Memorandum of Understanding) with effect from 1998 (Onyenkpa 1998).



On the surface, the recent expansion in oil and gas projects may seem surprising, given the high political risk in Nigeria, the escalation of community conflicts and the rise in oil related litigation. Multinational oil companies can choose between the former Soviet Union, Latin America, Southeast Asia and Africa, so may be instructive to identify factors, which make Nigeria more attractive to them than alternative investment outlets.<sup>23</sup> Actual profits and profit potential in the oil exploration and production sectors appear to be the key reason for Nigeria's importance to foreign investors.

According to a 1996 survey on the Nigerian oil industry by the consultancy firms Arthur Andersen and Andersen Consulting, Nigeria and the Middle East were ranked as the most attractive areas for oil exploration and production investments over the next five years. The high rating for Nigeria was influenced among other factors by the low cost of exploration and production, size and number of unappraised discoveries, and the preferred quality of the Nigerian oil (Arthur Andersen 1997), which we briefly examine here.

The low cost of exploration and production cannot be documented in detail because oil companies do not reveal the actual cost structure of their operations. Historically, production costs in Nigeria were reportedly relatively high by international comparison and they were said to have been increasing due to the use of more sophisticated technologies (Khan 1994, 85-86). Due to a shift in focus from onshore to offshore areas, investment costs per barrel in Nigeria became higher than in the Middle East. However, the costs of oil production in Nigeria can be increasingly regarded as

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<sup>23</sup> In most other oil producing countries, perception of political risk is comparable or lower than in Nigeria. For instance, Azerbaijan, Kazakhstan, Russia as well as Nigeria are rated by the Control Risks Group as medium-risk countries, while Turkmenistan and Kyrgyzstan are rated as low-risk countries (1997).

relatively low because the Middle East no longer serves as the main comparison for oil companies. While the production costs in Nigeria may be higher than in the Middle East, they may be significantly lower than in several new production areas such as the North Sea or the Gulf of Mexico. In comparison with the North Sea or the Gulf of Mexico, Nigeria may be regarded as a low cost area.<sup>24</sup> In any case, technical costs cannot explain the profitability of oil production in Nigeria. The fiscal regime of a country largely determines the profits earned by oil companies and thus the attractiveness of a country to oil companies.

The fiscal regime of Nigeria is not unfavourable to oil companies if compared with other countries in the world (Petroconsultants 1996). While comparisons are always difficult, the '*after tax profit oil*' for companies in Nigeria is higher than in several comparable countries in the world (see Appendix C, Table C.14.).<sup>25</sup> The government share of '*profit oil*' in Nigeria may be as low as 20%, while some other comparable countries have a share of between 60% and 90%. However, many of the arrangements gave the companies much less than 80%.<sup>26</sup> As Khan (1994, 93) has noted, there is a marked difference between the old joint-venture arrangements and the new production-sharing contracts. While the fiscal arrangements of the joint-ventures were said by Khan to carry a high tax burden, the new production-sharing contracts and gas projects from the late 1980s reflected much more favourable fiscal terms. For instance, the Nigeria

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<sup>24</sup> The insight on the relative merits of Nigeria's production costs in an international comparison was largely owed to personal communication with Martin Quinlan, journalist at the *Petroleum Economist*, London (September 1998).

<sup>25</sup> Profit oil is the gross revenue remaining after royalty oil, cost oil and tax oil recovery.

<sup>26</sup> For instance, the terms of new contracts for offshore licences in 1991 gave the companies a share of only 11.7%, after allowing 30% of oil produced for cost recovery (*Petroleum Economist*, March 1991).



Liquefied Natural Gas (NLNG) contract provides for various concessions, waivers and exemptions from the provisions of Nigerian law, including a tax holiday of up to 10 years starting from the first day of production - not expected until 1999 (Udoma and Belo-Osagie 1995). There may also be hidden benefits of operating in the country owing to the companies' operational control over joint-ventures (Frynas 1998).<sup>27</sup>

In addition to low operating costs and high profits, Nigeria was considered attractive to oil company managers thanks to the size and number of unappraised discoveries, most of which are suspected in the Niger Delta and the adjacent offshore areas. Nigeria's producing oil fields are mostly concentrated in the Niger Delta, which covers over 20,000 sq km in the south-east of the country. The Niger Delta (both onshore and offshore areas) is particularly conducive to the formation and accumulation of oil and gas for geological reasons (Hyne 1995, 90-98).

While the actual size of Nigerian oil wells is small, a key advantage of Nigeria for oil companies was the high rate of success in drilling operations, that means, the number of successful oil and gas well discoveries divided by the total number of drillings.<sup>28</sup> In other words, oil and gas could be found relatively easily in Nigeria. A good indicator of this success is the ratio of dry wells (i.e. drillings which do not result in any oil or gas

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<sup>27</sup> Government officials openly suggested to the Nigerian press that oil companies bribe state officials in order to be able to deflate the operating costs in the joint-ventures. Minister of Petroleum Resources Anthony Ani suggested that corrupt state officials benefited from the joint-ventures at the expense of the government revenue (*Tell*, 24 February 1997).

<sup>28</sup> The actual average size of oil wells in Nigeria is relatively small for geological conditions. Of Nigeria's 252 oil fields in 1995, 169 fields were below 100 million barrels. There were only sixteen so-called 'giant oil fields' with over 400 million barrels (see Appendix D, Table D.4.), most of which were discovered before 1970. The presence of smaller oil fields, thus, renders oil exploration and production in Nigeria more expensive as more oil installations are required. It also requires continuous exploration for new fields in order to replace the existing ones and in order to increase production. At the 1996 levels of production, Nigerian oil production could continue for another 20 or so years (see Appendix D, Table D.6.). At current levels of production, Nigeria could produce gas for over 100 years (see Appendix D, Table D.6.), though the figures are misleading as production is still relatively insignificant.

findings) to total completed wells, which was rather insignificant in Nigeria (see Appendix D, Table D.5.).

As another important geological advantage, the quality of the Nigerian oil is generally better than elsewhere. The Nigerian light crude oil is of high °API gravity, which stands for the American Petroleum Institute standard. Nigerian crude oil streams have a low sulphur content if compared with crude oil from most other countries (see Appendix D, Table D.7.).<sup>29</sup> Refineries often prefer crude oil with a low sulphur content because they must remove the sulphur from the oil (Hyne 1995, 14). As a result, the international price of crude oil from Nigeria is higher than that from many other countries.<sup>30</sup>

On the whole, Nigeria is very attractive to oil companies thanks to high profits, the presence of significant oil and gas reserves as well as the preferred quality of the Nigerian oil. Particularly high profits can help to explain why oil companies have expanded their investments in Nigeria despite considerable political risks in the country and the escalation of conflicts between oil companies and village communities.

From the point of view of village communities, the intensified oil and gas exploration and production activity from the late 1980s has increased the physical presence of oil companies in the oil producing areas and contacts with village

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<sup>29</sup> Currently, Nigeria's biggest oil stream is Qua Iboe, produced by Mobil's joint venture.

<sup>30</sup> For instance, in December 1996, Nigerian 'Bonny Light' fetched 24.53 US\$/barrel compared with 23.05 US\$/barrel for 'Arabian Light' and 21.82 US\$/barrel for 'Dubai' (*OPEC Annual Statistical Bulletin* 1997). In comparison with the price tag of crude oil from the Middle East, the Nigerian crude oil is also more precious because of lower transport costs. Nigeria is closer to the markets of Europe and the US than the Middle East, so an oil tanker journey from Nigeria is at least several days shorter. The buyer can therefore save money on the payment of tanker charter and insurance. This insight was largely owed to personal communication with Martin Quinlan, journalist at the *Petroleum Economist*, London (October 1998).

communities. This in turn is likely to have increased the probability of conflicts - and thus litigation - between oil companies and the local people.

## 2.5. Nigeria's Political Economy of Oil

Expanding oil production as well as oil price rises stimulated by the Organisation of Oil Exporting Countries (OPEC), particularly in 1973-74 and in 1979, rendered Nigeria almost entirely dependent on oil.<sup>31</sup> The importance of oil to the country was reflected in the contribution of oil revenues to total government revenue, which rose from 26.3% in 1970 to over 80% in 1974. Oil revenues have sustained the Nigerian government budgets since the 1970s.<sup>32</sup> According to Nigerian official figures, oil revenue accounted for 63.3% of the total federally collected revenue in 1997 (*Guardian*, Lagos, 19 February 1998). Even more impressively, the oil industry provided 96.0% of Nigeria's dollar receipts in 1997 (see Appendix C, Table C.8.).

Forrest (1994, 133) has indicated that one of the most noticeable consequences of the surge in oil revenues in the early 1970s was the neglect of non-oil tax revenues, of which some were abolished.<sup>33</sup> By the mid-1970s, the share of non-oil revenue in

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<sup>31</sup> Export revenues from oil rose by over 180% in 1974 and by over 70% in 1979. With this export boom, oil exports became Nigeria's major earner of foreign currency in the 1970s. In 1963, oil exports made up 10.75% of Nigeria's total exports. Ten years later, the figure had risen to 83.14%. In 1995, the share of oil exports in Nigeria's total exports was 95.7% (see Appendix C, Table C.4.).

<sup>32</sup> Oil revenues have fluctuated, falling below 70% of the total government revenue in 1978, 1982-83 and 1986 (see Appendix C, Table C.7.).

<sup>33</sup> Forrest (1993, 133-134) has concluded that the expansion of state revenues was accompanied by a '*deterioration in financial discipline and accountability as the struggle to gain access to state resources intensified*'. Forrest (1993, 133-134 and 142) has noted that, with rising expenditure, the government was able to afford massive tax reductions, an expansion of the public sector and subsidies to Nigerian public enterprises. A large proportion of oil revenues was spent on consumption, particularly on imported goods, which further increased Nigeria's dependence on oil.

government revenue had markedly declined, in particular, the contribution of agriculture (Ohiorhenuan 1984; Ikein 1990). The contribution of the agricultural sector to Nigeria's gross domestic product fell from around 60% in 1960 to less than 10% in 1978 (Ikein 1990, 19-20). The displacement of the agricultural sector made Nigeria's economy almost exclusively dependent on a single commodity - crude oil.

Dependence on oil exposed Nigeria to fluctuations in the international oil market. Unlike the low populated oil producing countries in the Middle East, the Nigerian government did not invest oil revenues in the West in order to secure a future income flow. Nor did the government set money aside in stabilisation or development funds (Forrest 1993, 142). This lack of long-term investments was not a problem as long as the oil revenues were increasing in the 1970s. But fluctuations in the oil market could throw Nigeria's public finances into disarray. The Nigerian government budget for 1998, for example, was based on the assumption of an average oil price of \$17 per barrel. In the same month that the budget was announced, the crude oil price fell from \$16 to \$14.73 per barrel, thus threatening the viability of the entire budget (*Newswatch*, 16 February 1998). In the first quarter of 1998 alone, Nigeria reportedly lost US\$ 700 million as a result of the global drop in oil prices out of US\$ 8 billion lost by all OPEC countries combined (*AP*, 19 April 1998). The state lacked alternative sources of financial revenue to those of oil and was thus unable to dispense with investments of foreign oil companies.

The nature of Nigeria's political economy, characterised by its dependence on oil revenues, was captured in the concept of a 'rentier state'. According to this concept (Forrest 1977; Graf 1988, 218-222), the Nigerian state revenues were extracted from

taxes and 'rents', largely in the form of oil revenues from foreign companies, rather than from 'productive' activity. Nigerian business was said to be restricted to 'unproductive' activities, which included (in the words of Forrest) '*commercial and service activities, small-scale capitalism and non-capitalist formations*' (Forrest 1977, 43). Forrest (1977) argued that Nigerian business has forged an alliance with foreign capital, which continued to dominate Nigeria's political economy. In other words, the Nigerian state was biased in favour of oil interests.<sup>34</sup>

As an extension to the concept of a rentier state, Turner (1978) has introduced the concept of a 'comprador state'. The concept of a comprador state was based on the observation that there was little indigenous capitalist production of final consumer goods in Nigeria. In general, Turner (1978, 166) has declared that contemporary political economies characterised by 'commercial capitalism' such as Nigeria are '*those which depend on foreign industrial production for virtually all locally-consumed manufactured goods*'. Within this system of 'commercial capitalism', indigenous business could only play a facilitating role for foreign capital within a triangular system of economic relationships, which involved foreign businessmen, Nigerian middlemen and the

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<sup>34</sup> The concept of the rentier state in Nigeria rests implicitly on the assumption of dependency theories that Nigeria lies at the periphery of the international capitalist system, while the foreign companies are located within the centre of the system. Johan Galtung (1971) has provided a sophisticated exposition of this theme. On the most basic level, Galtung's main idea was that the world consists of Centre and Periphery nations; and each nation, in turn, has its centre and periphery (Galtung 1971, 81). Within this Centre-Periphery structure, the Centre exploits the Periphery. Galtung (1971) has argued that the centre could only extract something from the periphery nation, if there was (in Galtung's words) a 'bridgehead' between the Centre nation and the Periphery nation. According to this view, a necessary condition for imperialism was a harmony of interest between the centre in the Centre nation and the centre in the Periphery nation and a disharmony of interest within the Periphery nation. In order to continue the relation of dominance, the centre of the Centre nation needed intermediaries in the centre of the Periphery nation (in Galtung's words a 'transmission belt' in the form of commercial firms or trading companies) who provided the 'bridgehead' for foreign capital and benefit from the economic exchange at the expense of the periphery of the Periphery nation (Galtung 1971, 84). If applied to the Nigerian rentier state, this would imply that foreign oil companies (located at the centre of the Centre nation) would need the Nigerian business elite (located at the centre of the Periphery nation) as commercial intermediaries to carry out oil exploitation.

collaborating 'state compradors'.<sup>35</sup> According to this view, a foreign business hired a local middleman as a go-between with the state. If the foreign businessman was awarded a contract, the middleman would receive a payment by the businessman, while the state comprador would receive a payment negotiated by the middleman. Turner (1978) has indicated that foreign businessmen could sometimes deal directly with the state without the help of middlemen. In either case, the Nigerian state was said to serve foreign business interests to a lesser or greater extent (Turner 1978).

This view of the post-colonial state in West Africa has been challenged by Collins (1983) who has suggested that the concept of the Nigerian state as 'rentier' or 'comprador' did not reflect reality. Instead, he has suggested that the role of the state '*reflects a complex interplay of sectional, group and class interests*'. In practice, the state role was said to be variable. That means, the state could sometimes support nationalist interests, sometimes indigenous capitalist interests and, at other times, it might favour foreign business interests. The arguments of scholars such as Collins seemed to have been substantiated by the rise of a class of indigenous industrialists in African states which appeared to be distinct from the commercial or 'comprador' class. In his more recent studies, Forrest (1993, 9) has argued that the new capitalist group in Nigeria '*is not an auxiliary comprador class. It is an active component of capital that has grown partly through collaboration with foreign capital, partly in competition with it, and partly independently*' which was a striking departure from Forrest's earlier position on the 'rentier state'. Criticism of the 'rentier state' concept rested primarily on the

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<sup>35</sup> 'Comprador' is a Portuguese word for 'buyer'. According to Turner (1978), a comprador would perform the task of providing access to local markets for foreign firms. In other words, a 'state comprador' performed the role of a 'gatekeeper' for foreign firms.



assumption that indigenisation<sup>36</sup> of the economy may have enhanced the position of the post-colonial state in Africa vis-à-vis foreign business interests.

Indigenisation measures in Africa were rooted in the nationalist African movements during colonial rule and after de-colonisation. Chazan *et al.* (1988, 156) have argued that African political ideologies in the post-colonial period came to share a basic concern to overcome poverty and underdevelopment, which resulted in some sort of economic nationalism across Africa. In general, the intellectual climate in Africa's post-colonial states appeared to favour economic nationalism which usually implied the assertion of broadly defined national economic interests as opposed to interests of foreigners.

Measures of indigenisation were capable of causing serious adverse impact on the profits of foreign-owned enterprises, including those of oil companies, so the effects of African nationalism could be potentially highly damaging to oil company interests. Like most other African countries, Nigeria has undertaken many measures of indigenisation of foreign enterprises (e.g. Biersteker 1987). The partial nationalisation of the Nigerian subsidiaries of foreign oil companies in the 1970s was only one of those measures. But Biersteker's (1987) pathbreaking study on indigenisation in Nigeria has suggested that the state and the business elite has largely failed to wrest control over the economy from foreign capital. Biersteker (1987, 299) has concluded that '*indigenisation has certainly not contributed significantly to Nigerians' control of their economy*' despite its limited success. By implication, indigenisation did not result in the demise of the 'rentier state'.

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<sup>36</sup> That means, measures designed to increase local (state or private) participation and control of significant business ventures.

The concept of the 'rentier state' indirectly implies that the state would not support litigation against foreign oil companies in Nigeria. The concept assumes that the state lacks autonomy vis-à-vis foreign capital. By implication, since foreign oil companies are said to have unrestricted access to the state officials, they could use their influence with state officials to increase their prospects of success in court cases filed against them. The key question in the subsequent sub-sections is, therefore, to what extent is the Nigerian post-colonial state biased in favour of foreign oil companies, given measures of indigenisation undertaken in the oil industry. The government petroleum policy and the role of the state in community conflicts are key factors in this analysis.

## **2.6. Nigerian Petroleum Policy**

In terms of the state involvement in the Nigerian oil industry, Obi and Soremekun (1995) have distinguished three distinct historical phases. According to this typology, the first phase extended from the colonial period until the end of the 1960s and involved little state participation in the oil industry. The second phase, as a response to political changes during the Civil War 1967-1970, was said to have been marked by an increase in state participation in the 1970s. Obi and Soremekun (1995) have argued that Nigeria moved from the collection of oil rents to direct intervention in the running of the oil industry. The third phase, as a response to the economic crisis of the 1980s and the introduction of the Structural Adjustment Programme (SAP), was said to be a reversal of some of the earlier policies of state intervention. Greater fiscal incentives to the oil industry were said



to be the key element of the third phase. All three phases are briefly outlined below with a view to a link between petroleum policy and state bias in favour of oil companies.

During the first phase of state involvement in the Nigerian oil industry until the end of the 1960s, the role of the Nigerian government in the oil industry was largely limited to the collection of tax and rent or royalty from foreign oil companies. The most notable change in petroleum policy in the 1960s was the increase in the amount of oil rents paid to the federal government.<sup>37</sup> The government was assigned an increasingly higher share of oil revenues at the expense of oil companies. But it did not attempt to intervene directly in the running of the oil exploration and production sectors in Nigeria. The only notable exception to the rule was the government participation in the construction of an oil refinery in Port Harcourt initiated by Shell-BP.<sup>38</sup> From the point of view of village communities, virtually nothing had changed since the government largely abstained from directly intervening in the running of the oil exploration and production work on the ground.

Obi and Soremekun (1995) have suggested that the second phase of state involvement in the Nigerian oil industry started during the Civil War 1967-70, which changed the perception of the oil industry in government circles. Pearson (1970, 139) has

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<sup>37</sup> In 1967, Nigeria's government proclaimed the Petroleum Profits Tax (Amendment) Decree 1967, which adopted new terms for tax assessment and allowed for higher government revenue. Pearson (1970, 24-29) has estimated that the new arrangements were capable of increasing the government share of profits from 50 to as much as 66%, although any comparison of actual profits was difficult as profits depended on changing oil prices. In the 1970s, the petroleum profits tax was further increased from 50% to 55% in 1973, to 67.75% in 1974 and to 85% in 1975, while royalty rates were increased from 12.5% to 16.67% in 1974 and to 20% in 1975 (Khan 1994, 16-18).

<sup>38</sup> Initially, the government agreed to take up only a 40% stake in the refinery and the oil companies seemed satisfied (Letter from J.S.Sadler, the UK Trade Commissioner in Lagos, to J.A.Davidson, Commonwealth Relations Office (18 September 1961), DO 177/33, PRO). Later the government share was increased to 50%. A joint venture was formed between the government (50%), BP (25%) and Shell (25%) as a separate company called the Nigerian Petroleum Refining Company (NPRC). The NPRC refinery was commissioned in 1965 near Port Harcourt in Rivers State under the management of BP (Pearson 1970, 92).

suggested that the Civil War made the government realise the strategic importance of oil for Western countries because foreign intervention had drawn Nigeria into the international politics of oil. Furthermore, the war required stricter government control of the oil industry and the state came to rely on oil revenue to promote economic development (Pearson 1970, 139).

Following the Civil War, Nigeria joined the OPEC in 1971. The most important effect of the OPEC membership on Nigeria's oil policy was in regards to indigenisation which was encouraged by the OPEC.<sup>39</sup>

At this stage, it must be pointed out that some indigenisation measures beneficial to the Nigerian economy were not inherently contrary to the interests of foreign companies. In line with the government's indigenization policy, for instance, the foreign oil companies have increasingly replaced expatriate managers with Nigerians. Yet this process was already under way before the promulgation of the Petroleum Decree in 1969 since it may make good business sense to employ indigenous managers. In fact, Shell-BP was committed to greater nigerianization from the 1950s, but the oil companies experienced the problem of finding educated recruits.<sup>40</sup> Nigerian institutions had also

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<sup>39</sup> A resolution at the OPEC Conference in 1968 advised member countries to acquire '*participation in the ownership of the concession-holding companies*' (OPEC 1992, 21). Indigenisation measures in the Nigerian oil industry had already been launched before the country joined the OPEC. As early as 1968, the Companies' Act forced all companies to become incorporated in Nigeria. This provided the government with a greater access to company accounts, a move resented by the US oil companies in Nigeria (Turner 1977, 48-49). In 1969, the Petroleum Act forced oil companies to recruit and train a greater number of Nigerians. According to the Petroleum Act, at least 75% of the total number of employees in senior and supervisory positions should be Nigerians within ten years from the grant of an oil mining lease. Companies were further obliged to restrict all employment opportunities for skilled, semi-skilled and unskilled work to Nigerians (Petroleum Act No.51 of 1969, section 37). The Petroleum Act also proclaimed that only companies incorporated in Nigeria could be granted oil licenses (Petroleum Act No.51 of 1969, section 2, sub-section 2).

<sup>40</sup> E.J. Pearce, the British Trade Commissioner at Enugu, wrote as early as 1959 that Shell-BP were committed to greater Nigerianisation and were '*indeed anxious to fulfil their promise*'. Pearce also noted that it is '*extremely difficult to secure and train the right type of Nigerian*' (Report of a visit of Mr. E. J. Pearce, the United Kingdom Trade Commissioner at Enugu, to the Shell-BP Exploration Company's installations at Owerri, Port Harcourt and in the field, 31 August - 3 September 1959, POWE 33/421, PRO). The proportion of Nigerians in senior and

problems to fill positions with qualified Nigerians, particularly during the shortage of trained staff in the early 1970s (Turner 1977, 68). It could be suggested that some indigenisation measures have served the broader objectives of both the foreign oil companies and the state in Nigeria.

Indigenisation measures in the Nigerian oil industry were greatly expanded in the 1970s. From 1971, the government gradually set up joint ventures with the oil exploration and production companies in Nigeria and acquired shareholdings in these ventures (Turner 1980, 107-109). By July 1979, the government had acquired a 60% ownership in all the major foreign oil companies except for the production-sharing agreement with Ashland and the Tenneco-Mobil-Sunray venture (Khan 1994, 70) (see Appendix C, Table C.10.).<sup>41</sup>

The nationalisation of BP in 1979 illustrated that the Nigerian government was able to fully nationalise a foreign oil company, if it was determined to do so (Khan 1994, 70-71). The nationalisation of BP, however, was conducted out of considerations for foreign policy, not for economic reasons.<sup>42</sup> For the Nigerian oil industry, the nationalisation of BP changed little. In the exploration and production sector, Shell

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supervisory positions at Shell-BP increased from 7% to 45% between 1957 and 1970 despite the fact that no legal provision forced them to employ Nigerians (Madujibeya 1976, 300). Since Shell-BP was voluntarily prepared to employ Nigerians, it has to be assumed that the company had commercial reasons to employ them.

<sup>41</sup> As a result of nationalisations in the 1970s, the share of foreign capital in Nigeria's mining industry had declined from 100% in 1971 to 40.8% in 1977, to 21.8% in 1989 (see Appendix C, Table C.11.).

<sup>42</sup> The government aimed at influencing British policies on Rhodesia (which later became Zimbabwe), which was then ruled by a white supremacist regime. The Nigerian government under General Obasanjo was committed to the cause of black majority rule in Rhodesia. The government wanted to exert political influence on the British foreign policy towards Rhodesia. The British government looked set to lift sanctions against Rhodesia, which finally prompted the Nigerian decision to nationalise BP. The nationalisation of BP was undertaken shortly before the Commonwealth Conference in Lusaka where Britain was expected to take a softer approach to sanctions against Rhodesia. An official excuse for nationalisation was coincidentally provided by an arrangement between BP and the US company Conoco. According to this arrangement, BP was to sell North Sea oil to Conoco in return for Conoco's supply of non-OPEC oil to South Africa (Aluko 1990).

continued to operate the joint-venture on behalf of the government, which was previously jointly operated by Shell and BP (Khan 1994, 70).

From the perspective of village communities, the nationalisation of BP and indigenisation of the oil industry changed virtually nothing since the foreign oil companies retained managerial control of the joint-ventures. Despite the fact that foreign companies operate the joint-ventures with a minority shareholding, two out of three of the multinational oil companies interviewed by Biersteker claimed that they had retained effective control over venture operations (Biersteker 1987, 241). In general, Terisa Turner (1977, 152) has argued that *'as long as they [oil companies in Nigeria] remained operators, participation had little more than financial implications for them'*. While the NNPC formally commands the joint-ventures with its ownership equity, the foreign oil companies control the day-to-day operations of the joint-venture.<sup>43</sup> Despite indigenisation measures, the same oil companies thus continued their operations in village communities.

Indigenisation measures were accompanied by a re-structuring of the state oil administration. In April 1971, the Nigerian National Oil Corporation (NNOC) was created to acquire any liabilities and interests in existing oil companies on behalf of the government.<sup>44</sup> In 1977, the NNOC was merged with the Ministry of Petroleum Resources (MPR) into the Nigerian National Petroleum Corporation (NNPC).<sup>45</sup> Until

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<sup>43</sup> Nominally, the NNPC owned roughly 58% of Nigeria's total oil production in April 1997. But the foreign oil operators - including Shell, Chevron, Mobil, Agip, Elf, Texaco - produced roughly 98% of Nigeria's total daily oil output in April 1997 (*Weekly Petroleum Argus*, 21 April 1997).

<sup>44</sup> NNOC Act No.18 of 1971.

<sup>45</sup> NNPC Act No.33 of 1977.

1986 when the MPR was re-established, the NNPC combined functions of an oil company with extended regulatory powers of a ministry. This peculiar role allowed the NNPC, for instance, to issue licences to its so-called competitors. The NNPC's ambitious goal was to eventually control the entire oil industry in Nigeria including oil exploration and production (NNPC 1986, 27).<sup>46</sup>

The NNPC never carried out its threat to fully nationalise the oil industry. In the same year the NNPC was established, the government paradoxically introduced new financial incentives for foreign oil companies in order to stimulate new exploration. Alli (1997) has observed that a decline in oil exploration by foreign companies in the 1970s had forced the government into a more accommodating tone towards the foreign oil companies. Between 1977 and 1983, the fiscal incentives for foreign oil companies were improved four times, although the new fiscal terms failed to significantly increase foreign investment in oil exploration (Alli 1997). According to Aluko (1990, 386), when NNPC officials were summoned by general Obasanjo in 1979 to opine on the potential impact of BP's nationalisation, they reportedly showed little enthusiasm for nationalisation of the oil industry. They were said to have argued that the nationalisation of BP would slow down oil production, which would in turn result in a fall of Nigeria's oil revenues in the short-term (Aluko 1990, 386). This cautious attitude towards nationalisation exemplified a marked shift from the earlier calls for full nationalisation of the oil industry among NNOC officials only a few years earlier. It has to be assumed that government officials have

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<sup>46</sup> The NNPC was intended to become '*a commercial, integrated, international oil company, engaged in exploration, production, processing, transportation and marketing of crude oil, gas, by-products and derivatives*' (NNPC 1986, 27). In negotiations between companies and the government, the ultimate threat of complete nationalisation of the oil industry was less effective because of the inability of the NNOC to operate successfully. Among other advantages, the creation of an effective state oil corporation could allow the government to do more than just bluff in negotiations (Turner 1977, 209).

recognised in the late 1970s that they could not dispense with foreign investment. Contrary to the assertion of Obi and Soremekun (1995), it thus appears that the third phase in Nigeria's petroleum policy has started in the late 1970s rather than in the late 1980s.

In the 1980s, faced with the immediate problems of falling oil revenues and political crises, the government further improved the fiscal terms for oil company operators in order to woo foreign investors (Alli 1997). Most importantly, the so-called Memorandum of Understanding (MOU) was introduced in 1986 as a comprehensive improved financial agreement between the government and the oil companies.<sup>47</sup> Changes in fiscal arrangements from the 1970s onwards signified the state's greater reliance on revenues from foreign oil companies. It is likely that this reliance rendered the state more receptive to the needs of oil companies rather than village communities in the oil producing areas.

During the third phase of petroleum policy in the oil industry, the government has continued to pursue measures of indigenisation in the oil industry. Above all, private indigenous oil companies have come to own a significant number of oil licences in the 1990s.<sup>48</sup> The rise of private indigenous oil companies is important because it could mean

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<sup>47</sup> The MOU of 1986 ensured a guaranteed so-called minimum fiscal margin of US\$ 2.00/barrel of oil (after royalty and tax payments), which was an increase from US\$ 1.60 in 1982 (see Appendix C, Table C.12.).<sup>47</sup> Calculation of tax was changed from the so-called Official Selling Price (OSP) to a market based price, which allowed higher profits for the oil companies. Other incentives included the reduction of the petroleum profits tax, security of tenure and investments, generous tax holidays, guaranteed export earnings including permission to operate offshore escrow accounts and reserves addition bonuses. In 1991, the MOU was reviewed and the financial incentives were slightly increased (Adepetun 1996). In 1993, the government introduced further incentives for exploration in deepwater offshore areas, including lower royalty rates and higher cost recovery allowances (Barrows 1995).

<sup>48</sup> Until the late 1980s, there was virtually no serious indigenous oil companies in Nigeria, except for Henry Stevens in the 1970s and Nigus Petroleum in the 1980s, of which both have not survived (Avuru 1997, 292). From the late 1980s, many new indigenous oil companies were founded starting with Dubri Oil which bought an oil licence



that the Nigerian state is no longer dependent on oil rents from foreign firms. It is thus instructive to explore whether the rise of indigenous oil companies resulted in less state bias in favour of foreign oil companies.

From the early 1990s, indigenous oil companies have expanded their exploration and production operations.<sup>49</sup> Yet only a handful of indigenous oil companies have actually set up operating companies, which are properly equipped. Since these companies often lacked the technical know-how and the financial resources to develop their oil licences, they generally sought experienced Western partners and formed joint-ventures, in which the foreign company had usually a 40% equity share (see Appendix C, Table C.13.). Of the nine 'active' companies in 1996, seven were operating with a foreign technical partner (Avuru 1997, 293).<sup>50</sup>

Indeed, the rise of indigenous oil companies has increased the penetration of Nigeria's oil exploration and production sectors by foreign oil companies. Technical partnerships with Nigerian companies proved as an effective strategy for smaller foreign oil companies such as the Canada-based Abacan to set foot in oil exploration and production in Nigeria.<sup>51</sup> While it is too early to make a prediction on the success of the

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from the foreign oil company Philips Oil in 1987. By the end of 1993, the Minister of Petroleum Resources Jubril Aminu had allocated oil licences to almost 40 indigenous oil companies (see Appendix C, Table C.13.).

<sup>49</sup> Their total production rose from 5,000 b/d in 1993 (Avuru 1997, 300) to 55,500 b/d at the end of 1996 and was further rising (*PostExpress*, 19 March 1998). According to Avuru (1997, 301), indigenous oil companies and their business partners have invested over US\$ 800 million in the Nigerian oil industry in the period 1991-1996.

<sup>50</sup> Of the 38 indigenous oil companies in 1996, Avuru (1997, 293) considered 20 as entirely inactive. Avuru (1997, 293) has only considered 9 companies as active in the sense that they have been '*engaged in a sustained effort at exploration and production*'.

<sup>51</sup> In early 1998, for example, Abacan had a 40% equity share in five joint-ventures with Nigerian companies, which covered six oil prospecting licences (OPLs): Yinka Fawalejo (OPL 309), Optimum Petroleum (OPL 310), Petroleum Products (OPL 233), Alfred James Petroleum (OPL 302) and Amni International (OPL 237 and 469).<sup>51</sup> Abacan and its Nigerian partners made a number of oil discoveries such as Amni's Ima Field offshore (Petroconsultants 1998).

indigenous oil companies, their combined share of oil production is likely to remain insignificant for some time. In April 1997, the two largest indigenous producers Amni International and Consolidated Oil accounted for only 0.7% of Nigeria's total oil production each (*Petroleum Argus*, 21 April 1997). The impact of the indigenous oil producers was thus too small to significantly alter the position of the Nigerian state vis-à-vis foreign oil companies.

The position of the Nigerian state vis-à-vis foreign capital appeared to have been strengthened under the oil minister Dan Etete in the period 1995-1998 who introduced a number of policy measures, which ran counter to the interests of the foreign oil companies.<sup>52</sup> Above all, Etete inflicted a blow to foreign oil companies with the Petroleum (Amendment) Decree No.23 of 1996 (also known as the Marginal Fields Decree), which empowered the government to recover all undeveloped marginal oil fields from foreign oil companies and re-allocate the same to indigenous oil companies (Adepetun 1996; Atsegbua 1997). The Decree is an important test case of the bias of the Nigerian state in favour of foreign capital because it violated the interests of foreign oil companies. Most foreign oil companies considered this compulsory acquisition of parts of existing concessions as a breach of existing agreements (Adepetun 1996; Atsegbua 1997). Foreign oil companies have previously claimed that the development of marginal fields was unprofitable. Yet a large number of oil companies, mostly foreign, have

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<sup>52</sup> There was a delay over the re-negotiation of the MOU from 1996 because the foreign oil companies could not agree with the government on new fiscal provisions. In 1997, Etete launched two new committees to monitor the oil industry: the Joint Venture Cash Calls Monitoring Committee and the LNG Project Monitoring Committee. Several months earlier, Etete accused the foreign oil companies of tax evasion, spurious contracts, lack of accountability and other transgressions. The new committees were charged with greater scrutiny of operating budgets of oil companies and greater physical monitoring of projects, among other things (*The Guardian*, Lagos, 24 January 1997).



reportedly indicated an interest to exploit these oilfields following the Decree No.23 (*Vanguard*, Lagos, 13 August 1998). According to Avuru (1997, 301), marginal fields can often be more economically exploited by smaller oil companies with smaller overhead costs than by large multinational companies. The government's decision to develop the marginal oil fields thus potentially benefited the Nigerian state, which would receive greater oil revenues, and small indigenous oil companies, which would be able to start oil production from marginal fields without the financial burden of oil exploration. At the same time, the Decree would constitute a substantial loss of capital assets for the established foreign oil companies.<sup>53</sup>

The Marginal Fields Decree, however, had a number of legal loopholes and was not yet enforced by 1998, which left the profit potential of the foreign oil companies unaffected. The lack of enforcement of the Marginal Fields Decree underlines the *ad hoc* nature of policy making in Nigeria. The one-page decree was hastily drafted and even failed to define the word 'marginal field', so the oil companies could, legally speaking, claim that they do not have any marginal fields. Shell indeed claimed that it did not have any marginal fields and refused to declare any of its fields as marginal (*Post Express*, 19 March 1998). In any case, the reluctance of the government to enforce the Decree suggests that the government is well aware of the adverse consequences of alienating the foreign oil companies, which could result in diminished foreign investment that Nigeria is dependent on. In any case, it must be remembered that marginal fields only constitute a peripheral asset of the foreign oil companies. One could thus consider the use of marginal

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<sup>53</sup> According to Avuru (1997, 303), there were 183 marginal fields in Nigeria with an estimated proven reserves of 2.3 billion barrels of oil. Based on the low oil price of US\$ 14, the marginal fields could yield US\$ 32.2 billion in gross oil revenues.

fields by indigenous producers as merely a profitable niche within the foreign-dominated oil sector. The Marginal Fields Decree does not put into question the concept of the rentier state in Nigeria, which explicitly allows for those indigenous business opportunities within the foreign dominated sector of the economy.

In general, the government largely continued to offer attractive financial incentives to foreign oil companies in order to ensure the flow of foreign investment.<sup>54</sup> The 1998 budget of the federal government, for example, provided for fiscal incentives for gas development projects, including a tax rate of 30% instead of the nominal petroleum profits tax rate of 85% (*Oil and Gas Update*, January 1998). Greater fiscal incentives to oil companies from the late 1970s underline a continuing contradiction in Nigeria's petroleum policy. On the one hand, the government pursued the goal of transferring control over the oil industry to Nigerians. The indigenization measures of the 1970s were not reversed. The foreign oil companies in Nigeria continue to operate joint-ventures, which are majority government-owned. On the other hand, the government and the emerging indigenous oil companies continued to require the foreign companies' technical expertise and investment. Therefore, the plans for the complete nationalisation of the oil industry were never carried out and the government was consistently attempting to avoid alienating the foreign oil companies. The third phase of petroleum policy making thus suggests that state bias in favour of oil companies was ensured by the continuing

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<sup>54</sup> It is not yet clear in what way petroleum policy will be altered under the current Abubakar regime or following the announced transition to civilian rule in 1999. Since the death of general Abacha in 1998, the Department of Petroleum Resources - the government's monitoring agency for the oil industry - was abolished and Garry Aret Adams, NNPC's former managing director, was appointed as the President's Special Adviser on Petroleum Resources (*PostExpress*, 31 August 1998 and 8 October 1998). The impact of this decision on petroleum policy cannot be fully predicted at this stage.

reliance of the state and the business elite on foreign oil and gas investment. It is likely that this bias rendered the state less receptive to the needs of village communities.

Even if the Nigerian state were not biased in favour of oil companies, an adequate policy on the oil producing areas would be hindered by corruption among government officials who benefit from private deals with oil companies. Indeed, it appears that a significant part of Nigeria's public resources has been used for private gain by private middlemen and state officials (or in the words of Turner 'state compradors'). According to Soremekun (1995), during the civilian rule 1979-1983, the Nigerian state lost 12.5 billion Naira in oil revenue as a result of fraudulent practices, largely as a result of private middlemanship. As a comparison, Nigeria's total government revenue from oil was 8.9 billion Naira in 1979 (Central Bank of Nigeria, *Economic and Financial Review*, June 1982). The respectable periodical *Africa Confidential* has revealed that some US\$ 3-4 billion were reportedly siphoned off in oil deals by the ruling elite and its business partners in less than four years from November 1993, when general Abacha came to power (*Africa Confidential*, 24 October 1997). As a comparison, Nigeria's total government revenue from oil was US\$ 12 billion in 1997 (*Guardian*, Lagos, 19 February 1998).<sup>55</sup>

Until today, corruption in the oil industry has persisted and middlemen as well as state officials have continued to provide access for foreign companies.<sup>56</sup> Under general

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<sup>55</sup> Among other financial arrangements, more than US\$ 2 billion allocated to the NNPC for refinery repairs in the period 1993-95 had gone missing. From general Abacha's rise to power in 1993, financial transfers involving the oil industry had to go through the presidential office, which suggests that the government was fully informed about the extent of corruption and financial deals in the oil industry (*Africa Confidential*, 24 October 1997).

<sup>56</sup> Conversely, the failure to pay bribes could endanger a company's survival. In 1997, the oil ministry demanded a 'signature bonus' on top of the required fee, before awarding the oil mining leases (OMLs). The indigenous firms Amni and Yinka Folawiyo, which complained about paying those bribes, had problems obtaining their respective OMLs (*Africa Confidential*, 24 October 1997).

Abacha's rule 1993-1998, foreign trading companies such as Glencore, Addax (both Swiss-based) and Arcadia (British-based) reportedly paid commissions of about 10-15% to government officials for the allocation of term-contracts (*Africa Confidential*, 24 October 1997).<sup>57</sup> The term-contracts exemplified the role of Nigeria's private middlemen such as the businessman Mike Adenuga, owner of the indigenous oil firm Consolidated Oil. Adenuga acquired term-contracts in the names of Tradoil and Crownway Enterprises from the Nigerian state. The fuel cargoes were in turn handled by the British-based firm Arcadia (*Africa Confidential*, 21 June 1996). Evidence on the prevalent corruption in Nigeria seems to confirm one of the key elements of Turner's model of the 'comprador state', in which a foreign business partner may seek a contract from the government through bribes.<sup>58</sup>

From the perspective of village communities, the question arises whether the Nigerian government would have pursued more beneficial policies for the people in the oil producing areas, if the state was less biased in favour of oil companies and government officials had less to benefit from commercial deals with foreign oil companies. While this question is largely hypothetical, the persisting government dependence on oil and corruption appear to restrict the range of choices available to policy-makers in Nigeria. In the face of those constraints, the Nigerian state is likely to be

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<sup>57</sup> In 1997, those three foreign companies were said to control roughly 80% of Nigeria's term-contracts between them, exporting 1.1 million b/d of crude oil from Nigeria (*Africa Confidential*, 24 October 1997). As a comparison, Nigeria's total oil production was 2.3 million b/d of crude oil in April 1997 (*Weekly Petroleum Argus*, 21 April 1997).

<sup>58</sup> Oil trading contracts have also remained an important source of political patronage. In early 1998, for example, General Abacha reportedly approved oil trading contracts for key members of the five government-backed political parties who chose him as a their presidential candidate in the transition programme to civilian rule (*Nigerian News Du Jour*, 13 February 1998).

more receptive to the needs of oil companies rather than village communities in the oil producing areas.

## 2.7. Ethnic Factionalism and Allocation of Resources

The bias of the Nigerian state in favour of oil companies has an ethnic dimension. Crude oil has been almost exclusively located on the land of ethnic minority groups in the south-east of the country. Because of their small numbers, these groups - the Ijaw, the Urhobo, the Isoko, the Ogoni and other smaller groups - wielded little political power.<sup>59</sup> At Nigeria's independence in 1960, political power was distributed between three major ethnic groups - the Hausa-Fulani, the Ibos and the Yorubas, who dominated the Northern, the Eastern and the Western regions, representing roughly 66% of Nigeria's population. In each of the regions, the dominant ethnic group lived alongside many smaller groups.<sup>60</sup>

While the oil producing areas have been mainly located in the Christian-Animist South, the mainly Muslim North wielded more political power throughout Nigeria's history to-date.<sup>61</sup> Out of eleven Nigerian heads of state since independence in 1960, nine

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<sup>59</sup> However, ethnic loyalty has limits. Government participation of ethnic minority leaders does not necessarily result in a better treatment for those minorities. Dan Etete (oil minister 1995-98), for example, was an Ijaw from an oil producing area (*Africa Confidential*, 9 May 1997). But Etete was busy arranging lucrative business deals in the oil industry for himself rather than assisting the Ijaws (*Africa Confidential*, 24 October 1997).

<sup>60</sup> Olowu (1990, 200-201) has estimated the number of ethnic groups at between 250 and 400.

<sup>61</sup> Nmoma (1995, 314) has argued that the religious divide between the northern-Muslim and the southern predominantly Christian cultures was probably greater than the purely ethnic divide. Nigeria's population has diverse religious backgrounds comprising of Islam, Christianity and Animism unevenly spread in the regions. According to Ibrahim (1991, 115), Muslims, Christians and 'pagans' made up 47, 34.6 and 18.2% of the population in 1963 respectively, though the true extent of Animism may have been much greater.

came from Northern groups (including three from the so-called Middle Belt of Nigeria)<sup>62</sup>, two were Yorubas, one was Ibo.<sup>63</sup> Heads of state from the North also tended to rule much longer than their Southern counter-parts (see Table 2.2.).<sup>64</sup>

**Table 2.2. Nigerian Governments, 1960-1999**

Period of Rule	Head of State	Type of Government	Ethnic Origin	How the Rule Ended
1960-1966	Balewa	Civilian	Hausa	Attempted Coup/ Assassination
1966	Ironsi	Military	Ibo	Coup/Assassination
1966-1975	Gowon	Military	Angas/Middle Belt	Coup
1975-1976	Mohammad	Military	Hausa	Attempted Coup/Assassination
1976-1979	Obasanjo	Military	Yoruba	Elections
1979-1983	Shagari	Civilian	Fulani	Coup
1984-85	Buhari	Military	Fulani	Coup
1985-1993	Babingida	Military	Minority Group in the Niger State	Elections results nullified in June 1993, stepped down in August 1993
1993	Shonekan	Civilian	Yoruba	Head of Interim Government, Coup
1993-1998	Abacha	Military	Kanuri*	Presumed heart attack
1998-1999	Abubakar	Military	Middle Belt tribe	

\* Abacha grew up in Kano, Central Hausaland

Source: Khan (1994, 13), various newspapers.

With Nigeria being dominated by the Northern elite, resource allocation was biased against the interests of the people in the oil producing areas. As federal budgets

<sup>62</sup> The Middle Belt are largely non-Muslim areas populated by northern ethnic minorities. Some of the conflicts within Nigeria's ruling elite were instigated by Middle Belt officers (Othman 1989).

<sup>63</sup> From 1966 until today, control of the armed forces has remained in the hands of officers from the North. The change of governments in Nigeria was largely determined by the conflicts within this Northern-dominated military rather than by ethnic conflicts. That means, different factions of the military battled over the distribution of government posts (Othman 1989). But ethnic causes of political instability have continued to play an important role in Nigeria's history. President Babangida's cancellation of the democratic election in 1993, for example, was said to have been designed to prevent the South from taking control. Abiola, the election victor, was a Yoruba from Western Nigeria who had no approval of the traditional rulers in the North (Nmoma 1995, 340).

<sup>64</sup> The rule of Ironsi, an Ibo from the Southern region, in 1966 and Shonekan, a Yoruba from Western Nigeria, in 1993, whose power was very weak, only lasted for a few months each.



were becoming increasingly dependent on oil revenues, the Nigerian regions and later states were allocated a smaller proportion of the locally collected revenue. Following Nigeria's independence in 1960, the federal government was required to pay each region 50% of the revenues derived from that area. The allocation on the basis of derivation was reduced to 45% in 1970 and to 20% in 1975. Subsequently the derivation principle was abolished (Suberu 1996, 29-31). This was to the detriment of the people in the oil producing areas because a higher share of the oil revenues generated in their local areas was allocated to states that were non-oil producing.<sup>65</sup>

A comparison of revenue allocation from 1960 to-date is not entirely conclusive since only a small fraction of locally raised revenues ever reached village communities in the oil producing areas.<sup>66</sup> Williams (1992, 106 and 117) noted that the current principle of resource allocation in Nigeria is flawed because allocation takes places on the basis of the states rather than on the basis of ethnic minorities, yet state boundaries do not correspond to ethnic boundaries. Members of the dominant ethnic group in an area usually control spending of a region, a state or a local government council. They might, therefore, put other minorities of that area at a disadvantage in terms of allocation. Within that system, ethnic minorities in the oil producing areas are marginalised because they tend to have little control over spending decisions.

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<sup>65</sup> In 1997, the federal funds were officially allocated as follows: 48.5% for the federal government, 24% for the federal states and 20% for the local government councils, while the rest went to 'special funds', which included 3% for the oil producing areas. Of the government's net payments to the federal states in 1997, the three main oil producing states - Delta, Rivers and Bayelsa - received a share of 3.36%, 2.85% and 2.38% respectively (*Guardian*, Lagos, 19 February 1998).

<sup>66</sup> Between 1960 and 1963, for example, the government of the Eastern Region was entitled to 50% of the oil revenues. But the Eastern Region, of which oil producing areas formed a small fraction, was ruled by members of the Ibo ethnic group from non-oil producing areas. It is thus likely that only a small fraction of the oil revenues reached the oil producing areas.

Because of the current system of revenue allocation, as Osaghae (1998, 11) has argued, the creation of separate states and local government areas '*has been highly positive for minorities*' because it provided '*a pedestal for direct access to and participation in the federation's politics and governance*'.<sup>67</sup> Ethnic or other interest groups in the oil producing areas often lobbied for a new state or a local government area to be created within their respective area with the view to be able to allocate financial resources themselves. The Ogoni leaders, for example, have long advocated a federal state of their own, although they have failed so far (Osaghae 1995). Ethnic competition over resource allocation in the oil producing areas persisted, or even intensified, as a result of the creation of new states and local government areas. For instance, the relocation of a local government headquarters led to ethnic clashes in March 1997 between Ijaws and Itsekiris at Warri in Delta State, which forced Shell to close several oil wells (*AFP News Agency*, 31 March 1997; *Africa Confidential*, 9 May 1997).

As a concession to the people in the oil producing areas, 1.5% of the government revenue was earmarked for those areas in 1982. As a result of protests against oil companies in the early 1990s, the Nigerian government increased the amount of financial contributions to the oil producing areas from 1.5 to 3% and the Oil Mineral Producing Areas Development Commission (OMPADEC) was established in 1992 as a sort of development agency to distribute the 3% allocation to the oil producing areas. The

<sup>67</sup> Under pressures from various ethnic and interest groups, Nigeria has gone from being divided into four regions in 1967 to 36 states by 1996 (see table below). The number of local government areas rose from 301 in 1976 to over 750 in 1996 (Osaghae 1998, 11). This allowed more ethnic groups to participate in the allocation of resources.

**Table: Creation of Nigerian Regions and States, 1954-1996**

1954	1963	1967	1976	1987	1991	1996
3 regions	4 regions	12 states	19 states	21 states	30 states	36 states

Sources: Forrest (1993, 50); *The Guardian* (Lagos, 19 February 1998).



example of the OMPADEC is instructive for an understanding of the conflicts arising from the allocation of oil revenues. Osaghae (1998) has observed that conflicts have arisen between different ethnic and common interest groups over the composition of the OMPADEC board and over the formula for distributing the OMPADEC budget.<sup>68</sup> Projects were supposed to be distributed in proportion to a community's share of the current oil production. This formula was considered as unjust by some communities such as Oloibiri, on whose land oil companies had produced a significant fraction of the oil in the past, but were no longer producing. In addition, the data used by the OMPADEC was said to be unreliable (Osaghae 1998).

While a number of communities in the oil producing areas were able to benefit from OMPADEC projects such as electricity and water provision, a significant proportion of the funds allocated to the OMPADEC was mismanaged. OMPADEC's chairman Albert K. Horsfall was to report directly to the head of state, but there was no supervisory authority over the agency. Okonta and Douglas (1998) have observed that Horsfall and the other commissioners were empowered to undertake any projects they liked anywhere they liked, including setting up banks and manufacturing companies and awarding substantial public contracts. With the absence of any performance guidelines or controls, the OMPADEC proved inefficient and corrupt.<sup>69</sup> In the face of inefficiency and under public pressure, the Nigerian government launched an investigation into the running of the OMPADEC in 1996 and Albert K. Horsfall was sacked in December 1996

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<sup>68</sup> In 1996, ten of the twelve members of the OMPADEC board were from the oil producing areas (Osaghae 1998, 23).

<sup>69</sup> In a single project, for example, the OMPADEC reportedly financed the construction of the Eleme Gas Turbine in Port Harcourt at the cost of US\$ 20.7 million in 1993. At the end of 1995, the project was still uncompleted and it transpired that more funds were needed to conclude the project (Okonta and Douglas 1998).

(Okonta and Douglas 1998). The appointment of Eric Opia as OMPADEC's sole administrator in 1996 did not appear to have improved efficiency as the structures of the agency did not, by and large, change. In 1998, Opia was removed from the OMPADEC after he failed to account for 6.7 billion Naira (almost US\$ 80 million) he received on behalf of the OMPADEC (*Post Express*, 19 July 1998) and the OMPADEC was re-structured (*Post Express*, 2 October 1998 and 13 November 1998).

Even if the OMPADEC had been successful in effectively distributing funds to the people in the oil producing areas, a 3% share of government revenue was considered as too low by many community leaders.<sup>70</sup> The most wide-spread demand of communities in the oil-producing areas, as Suberu (1996, 29-31) pointed out, is that a significant proportion of the oil revenues should be returned to their areas on the basis of derivation.<sup>71</sup> This would result in fewer funds for non-oil producing areas which, until now, was unacceptable to those who rule Nigeria, particularly the Northern elite.

The mere establishment of the OMPADEC suggests that political pressures on the microlevel can influence government policy on the oil industry, even though the state may remain biased in favour of oil companies. The failure of the OMPADEC to channel resources to the oil producing areas illustrates the use of public oil revenues for the private benefit of specific individuals at the expense of village communities affected by oil operations on the ground.

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<sup>70</sup> The Ogoni leader Ken Saro-Wiwa considered the OMPADEC as an 'insult' and decried that the agency was designed to '*bait us and destroy our will to resist justice*' (quoted in Suberu 1996, 38).

<sup>71</sup> One of the major demands of the leaders of minorities in the oil producing areas at Nigeria's constitutional conference of 1994-95, as Osaghae (1998, 12) noted, was that communities from those areas should be part-owners of the oil, jointly with the federal government, and should receive a part of the oil revenues.

## 2.8. Community Protests against Oil Companies

The failure of the Nigerian state to channel a significant amount of financial resources to the oil producing areas resulted in protests against the state and oil companies. Osaghae (1998) has argued that, in the last decade or so, ethnic groups in the oil producing areas became more militant in their demands as more and more people came to realise that they received little investment in their areas, while Nigeria's economy was thriving on oil revenues extracted from their land. Since the late 1980s, these groups such as the Ogoni, Ijaw, Urhobo, Isoko and other smaller groups have intensified their demands for increased investment and started to protest against oil companies. As a result of the rising militancy of protesters, the number of community disruptions to oil operations in Nigeria have risen in the 1990s. Shell was mostly affected because of the company's large onshore concessions.<sup>72</sup>

Organisations advocating the rights of the people in the oil producing areas have grown in numbers and appear to have become more influential in the last decade or so. The main political threat to oil company operations in the 1990s came from the formation of the Movement for the Survival of the Ogoni People (MOSOP) under the leadership of Ken Saro-Wiwa, whose protests targeted Shell. Like many other tribes in Nigeria, the Ogonis - a minority group of 500,000 people - felt that they should receive greater benefits from oil operations in their communal areas. Although the crude oil was produced in their areas by Shell's venture, the communities received little economic benefit and were marginalised politically in Nigeria. Another reason for anti-Shell protests

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<sup>72</sup> In 1997, Shell reportedly lost 67 working days to community disturbances out of 117 lost in the Nigerian oil industry. Shell was followed by the indigenous company Consolidated Oil with a reported loss of 34 working days (*Guardian*, Lagos, 24 February 1998).

was that environmental damage had left many communities more impoverished than before because of destroyed crops, fish and community lands (Fabig 1998; Mittler 1996). In October 1990, the leaders of MOSOP and traditional Ogoni rulers presented the '*Ogoni Bill of Rights*' to the Federal Military government, in which they demanded political autonomy for the Ogonis. In December 1992, MOSOP asked Shell, Chevron and the NNPC for billions of US dollars in compensation for damages from oil operations and the Ogoni protests became more militant (Osaghae 1995). The Ogoni protests received international support from Western non-governmental organisations such as Amnesty International and Greenpeace which further put pressure on the Nigerian government and the oil companies, particularly Shell (Mittler 1996).

Until 1993 when Shell officially withdrew from the Ogoni area, oil operations were disturbed either in spontaneous protests or under the direction of MOSOP or the more radical National Youth Council of Ogoni People (NYCOP) and the Ethnic Minorities Rights Organisation of Africa (EMIROAF). For instance, villagers at Bomu in Ogoni protested against the pipeline construction by Shell, which prompted the withdrawal of the sub-contractor firm Willbros.<sup>73</sup> When Willbros returned to the area in April 1993, a crowd successfully prevented the company's work.

The 'Ogoni uprising' helped to spark off anti-oil protests elsewhere in Nigeria. Many new local associations were formed with the aim of advocating the rights of the people in the oil producing areas such as the Ijaw National Congress (INC), the Ogba

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<sup>73</sup> This has been described in a report for Shell in Nigeria, prepared by Shell's sub-contractor Willbros. „Review of Events Leading to the Withdrawal of Workforce from the Bomu Area," Willbros West Africa Inc. for Shell Petroleum Development Company of Nigeria, 3 May 1993.

Solidarity, the Urhobo Progressive Union, the Niger Delta Environmental Forum, among others (Ogbnigwe 1996).

Until today, conflicts between oil companies and village communities have continued, particularly in ethnic Ijaw communities. In March 1997, for example, over 100 Shell workers were taken hostage by Ijaws armed with automatic rifles and oil installations were occupied by groups of Ijaws. Eleven oil pumping stations of Shell, accounting for 210,000 b/d, were shut down during the hostage-crisis (*Phone News International*, 25 March and 7 April 1997). Privately industry officials admit that the threat from the millions of Ijaws, behind the bulk of the recent incidents, is greater than from the 500,000 strong Ogonis.

An example of how local protests against oil companies can escalate in violence was provided by an official inquiry into the Umuechem massacre (Rivers State of Nigeria 1991). On 30 and 31 October 1990, local youths at Umuechem demonstrated against Shell. Shell was operating in the area from the late 1950s, resulting in the pollution of a stream, destruction of farm crops and other losses to property. The community had received no or little compensation, while villagers called for social amenities such as provision of electricity. Shell did not respond to the dissatisfied community members, but decided to rely on its structural links. On October 29, J.R. Udofia, Shell's Eastern Division manager wrote a letter to the Commissioner of Police in Rivers State informing him of an '*impending attack*' on oil facilities allegedly planned for the next day. Udofia requested the Commissioner to '*urgently provide us with security protection (preferably Mobile Police Force) at this location*' (Rivers State of Nigeria 1991, Appendix G). In

the course of the next few days, the mobile police moved in with teargas and gunfire, killing around 80 people and destroying almost 500 houses. In the wake of the incident, a judicial commission of inquiry was set up by Colonel Godwin Osagie Abbe, the Rivers State Military Governor. The inquiry found that there was no imminent threat of attack and that the demonstrators were neither violent nor armed (Rivers State of Nigeria 1991).

The incident at Umuechem exemplifies oil company reliance on security co-operation in dealing with conflicts in village communities. Rather than engaging in negotiations with the Umuechem people, Shell had decided at an early stage of a peaceful protest to call on the security forces for assistance. There have other occasions on which the Mobile Police Force moved in to deal with anti-Shell protests such as at Iko in Akwa Ibom State in 1987 and at Shell's Bonny Terminal in 1991 (Rowell 1996, 294-297). There are indications that security forces have also intervened on behalf of other oil companies. Between December 1998 and February 1999, for instance, dozens of anti-oil protesters were killed by the security forces (*Reuters*, 31 December 1998; *AP*, 1 February 1999).

In addition to assistance by state security services, all oil companies maintain their own security force. These security men are drawn from the Nigerian police and perform duties at oil installations. Paid by the oil companies, they are known as Shell Police or Mobil Police. The best evidence on security co-operation comes from the court case *X.M.Federal Limited v. Shell*<sup>74</sup>, in which an arms supplier sued Shell over breach of contract in the Federal High Court of Nigeria.<sup>75</sup> Among others, the court case revealed

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<sup>74</sup> Unreported Suit No. FHC/L/CS/849/95.



that the Nigerian government provides policemen to guard oil installations. In a letter dated 1 December 1993, Shell's Managing Director applied for an increase in 'supernumerary police guards' (also known as 'spy police') from 1,200 in 1993 to 1,400 in 1995 for the company. According to the figures for 1993, 200 men were stationed in Shell's headquarters in Lagos, 400 men were stationed in Warri (Shell's Western Division) and 600 men were stationed in Port Harcourt (Shell's Eastern Division). Furthermore, Shell applied for a contingent of additional 650 policemen for whom the company was to provide '*complete logistics, accoutrement and welfare support*'.

Evidence from the court case *X.M. Federal Limited v. Shell*<sup>75</sup> also revealed that Shell was negotiating to import weapons into Nigeria in breach of an arms embargo between 1993 and 1995. According to court evidence, Shell sought tenders from Nigerian arms suppliers to procure weapons worth over US\$ 500,000. These included 130 Beretta 9mm calibre sub-machine guns, 200,000 rounds of bullets and 500 smoke hand grenades. Nigeria's Inspector General of Police approved the arms purchase under pressure from Shell managers. Following revelations in the British press on Shell's arms dealings in 1996, Shell International spokesman later admitted that one of three bids for arms purchases had been 'selected' by Shell in March 1995, although the arms deal had not gone ahead (*Observer*, 11 February 1996).

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<sup>75</sup> The first plaintiff was X.M. Federal, an international arms dealer. The second plaintiff was Humanitex Nigeria Limited, a Nigerian arms dealer approved by the government. Humanitex was employed by X.M. Federal as security adviser and its Nigerian agent. Shell ordered arms from Humanitex but later withdrew its order, most likely because the arms were considered by Shell too expensive. Brian Anderson, Shell's managing director, wrote in a letter in September 1994: '*We consider this quotation to be excessive, based upon our own investigations from other sources of supply*' (Letter from Brian Anderson, Shell's Chairman and Managing Director, to Alhaji Coomassie, Inspector-General of Police, 12 September 1994). The arms supplier subsequently filed a lawsuit.

<sup>76</sup> Unreported Suit No. FHC/L/CS/849/95.



The government's suppression of the anti-oil protests and the companies' reliance on security protection exemplified that the ruling Northern elite was unwilling to yield to the demands of community leaders in the oil producing areas. Anti-Shell protests of the Ogonis, as Human Rights Watch (1995) has documented, were met with violence by the state, which involved extrajudicial killings, arrests and floggings of protesters. In November 1995, Ken Saro-Wiwa and eight other Ogoni leaders were executed, which was widely seen as linked to anti-Shell protests (e.g. *Observer*, 19 November 1995).<sup>77</sup> The government has blamed some of the violence in the Ogoni area on 'ethnic clashes'. It was claimed that over 1000 Ogonis were killed in ethnic clashes with the Andoni and Okrika ethnic groups in 1993 (Osaghae 1995). However, Human Rights Watch (1995, 11) provided evidence that the government has played an active role in *'fomenting such ethnic antagonism'* and that *'some attacks attributed to rural minority communities were in fact carried out by army troops in plainclothes'*. Osaghae (1995, 337) has argued that such views were *'plausible because Andoni leaders interviewed denied having any problems with the Ogoni neighbours'*. While the existence of ethnic conflicts cannot be denied, it appears that the government has used ethnic factionalism as a weapon against protesters in the oil producing areas. According to Osaghae (1995, 342), the 'Ogoni uprising' of the early 1990s illustrated that *'the state exists to further the interests of the majority groups against those of the minorities and that it colludes with the multinational oil companies'*. In other words, the Ogoni uprising suggested that the

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<sup>77</sup> The *Observer* (19 November 1995) indeed reported that Shell had refused to help Saro-Wiwa unless anti-Shell protests were called off.

Nigerian state is biased in favour of oil companies. This could be seen as an important factor in the escalation of conflicts between oil companies and village communities.

## **2.9. Conclusion**

This section of the thesis served as a basic background to our subsequent analysis of legal disputes by examining the making of the Nigerian oil industry and Nigeria's government petroleum policy. We have seen that despite partial nationalisation and nominal control of the Nigerian government, oil companies have largely retained effective managerial control over joint venture operations. Operational control implies the legal liability of foreign oil companies as operators (both in joint-ventures and production-sharing contracts) for any damage caused in the course of oil operations. Within the framework of the thesis, it can thus be argued that government policy plays only a limited direct role in the village community as far as day-to-day oil operations are concerned. If oil operations cause damage, those affected have to deal with the foreign oil companies rather than with the government, which is important for the study of litigation between village communities and the oil industry, not least because companies, not the government, are usually named as defendants in court cases involving damage from oil operations.

In addition to providing the historical background to the subsequent analysis of legal disputes, we have investigated the basic elements of Nigeria's political economy with a view of exploring the question of whether the Nigerian state is biased in favour of oil companies. On the surface, evidence on the bias of the state in favour of foreign

capital puts into question the concept of the rentier state. Some policies such as the Marginal Fields Decree indeed ran counter to the interests of the foreign companies. The notion of a rentier state can be supported, however, to the extent that foreign oil companies have largely continued to dominate the economic development of the Nigerian oil industry and government revenue. In the 1970s, the Nigerian federal finances came to rely primarily on oil rents and the state was forced to continuously attract foreign investment in the oil sector in order to ensure a continuation of oil exploration and production. While foreign oil companies could not dictate petroleum policy, it has to be assumed that the state largely avoided to impose policy measures, which would alienate foreign investors. The Marginal Fields Decree, for instance, was promulgated in the best interests of the state and the indigenous business interests, but it was never being implemented as it contravened the interests of the foreign oil companies and their allies in the state administration and the state was too weak to attack those vested interests. Judging by secondary sources discussed in this section of the thesis, there are indications that the Nigerian state is predisposed in favour of oil companies at the expense of those affected by oil operations.

This speculative finding on the bias of the state finds support in the government's inadequate budgetary contributions to the oil producing areas. The failure to satisfy the monetary demands of the community leaders in those areas could, in turn, be assumed to trigger anti-oil protests. By implication, the rise in social unrest and litigation may be partly attributed to the unequal allocation of benefits and externalities arising from oil

operations within Nigerian society, a fact which cannot be directly derived from an analysis of court cases.

With the executive arm of the government being biased in favour of oil interests, it could be expected that the state would restrict litigation against oil companies. However, the discussion in this section of the thesis cannot answer the question of whether there also exist biases within Nigeria's formal legal system and the judiciary. These questions will be explored in the two subsequent sections of the thesis.

## **Section 3: Nigeria's Formal Legal System and Oil Related Legislation**

### **3.1. Introduction**

Legal disputes between village communities and oil companies are constrained by the structural character of the legal system and oil related statute law which are discussed in this section of the thesis.<sup>1</sup> The structural character of the legal system determines the venues in which legal disputes between companies and communities are located. Statute law determines the legal rights and obligations of village communities and oil companies when dealing with each other. The constraints and opportunities provided by the legal system partly determine the responses of village communities and oil companies to socio-economic conflicts. In other words, the structural character of the legal system and statute law determine what is feasible in litigation between village communities and oil companies.

In addition to providing a legal background to the subsequent analysis of legal disputes, we investigate whether the Nigerian legal system is biased in favour of oil companies. If the Nigerian state is indeed prejudiced in favour of oil companies as our previous discussion suggested, it has to be assumed that it would restrict the legal rights of those adversely affected by oil operations. In this context, this section of the thesis examines those factors within Nigeria's formal legal system and statute law which may

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<sup>1</sup> For an introduction to the Nigerian legal system, see Obilade (1979), Akande (1982) and Okonkwo (1980). For an introduction to Nigerian petroleum law, see Etikerentse (1985), Olisa (1987) and Atsegbua (1993).

have given rise to an advantageous legal position for oil companies vis-à-vis those adversely affected by oil operations on the ground.

The Nigerian legal system has much in common with other legal systems in Africa, particularly those in former British colonies, in which English Common Law was introduced under colonial rule. Despite its importance to socio-economic development, however, the Nigerian legal system (and Africa's legal systems in general) has rarely been studied in greater detail from a socio-legal perspective. There are at least three reasons why a study of legal systems in Africa is very important. First, legal systems in Africa are very complex and rich. There has been a basic agreement between scholars on the main characteristic and the main heritage of colonial legal systems in Sub-Saharan Africa: the plurality of two or more legal systems. In general, as Allott (1965, 220-221) has noted, the British colonial government introduced the legal system of the mother country, while, at the same time, permitting the regulated continuation of traditional African law and judicial institutions unless the latter were deemed contrary to the interests or morals of the colonisers. This plurality (in Allott's words, duality) of legal systems was often accompanied by the existence of different systems of courts. African customary law usually consisted of unwritten indigenous customs and traditions and was largely tribal in origin. It commonly applied to Africans only with some exceptions in the so-called 'native courts'. English law was commonly applied to non-Africans as well as to transactions between non-Africans and Africans in the territorial or British courts (Allott 1965, 220-222).<sup>2</sup> For the oil industry, the existence of this plurality meant that companies were able

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<sup>2</sup> African customary law could also be applied to non-Africans in West Africa and Northern Rhodesia in cases where a non-African contracted with an African and a court found that to rely strictly on English law would result in substantial injustice to either party (Allott 1965, 222).

to operate in a village setting according to Western colonial laws and contracts, while the local population was able to continue living according to customary legal systems. In other words, the oil companies and the village communities came to live according to different legal systems during colonial rule.

Second, legal systems in Africa are not stable but dynamic, particularly owing to the nature of customary law.<sup>3</sup> It is accepted among scholars that African customary law is far from being 'immutable' but rather is subject to constant change. Thus the content of legal rules in Africa may be highly flexible (Allott *et al.* 1969, 9-15). As Park (1963, 67) has noted, customary law in Nigeria develops from time to time and modifies itself in order to keep pace with changes in social conditions. Not unlike US or English law, Allott *et al.* (1969, 10) maintained that African judges as well as researchers have to select from a variety of principles and rules in a particular case, which marks any '*living, adaptable, functional system of law*'. In their view, the crucial problem is that of a time factor. Given the flexible nature of law, law may undergo changes at different levels - principles, norms or rules - at any time, so it may be difficult to reconstruct the contents of traditional law at a particular period (Allott *et al.* 1969, 9-15). By implication, oil companies may sometimes be unaware of the changing customary law in their areas of operations.

Third, the significance of African law to Africa's socio-economic development may be greater than some observers think. Standard Western sociological studies

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<sup>3</sup> Scholarly research on the introduction and development of legal systems in Africa, particularly in former British colonies in West Africa, has a rich tradition going back to the early 1960s (Allott 1960 and 1962, Elias 1962, Daniels 1964) but there has been surprisingly little emphasis on the dynamic change of legal systems. Scholars have researched some administrative and judicial innovations introduced in colonial as well as post-colonial states in Africa, yet there has been little research on the changing nature of the Common Law applied in Nigeria.



recognise that society is governed by rules and norms, although many of them are not called 'laws'. Anthony Giddens (1989, 117), for example, has stated that the world *'would collapse into chaos if we did not stick to rules which define some kinds of behaviour as appropriate in given contexts, and others as inappropriate'*. In the African context, Gluckman (1965, 2-3) has argued that societies which have no formal legal system, nonetheless, abide by well-established and widely accepted customary rules.<sup>4</sup> Since customary rules do not resemble written Western law, it is possible that oil company staff may sometimes underestimate the significance of those rules and norms when dealing with village communities.

The three features of legal systems in Africa mentioned above may have had wide repercussions for conflicts between village communities and oil companies. Conflicts between the companies and communities may arise if one party does not recognise the validity of the other party's laws. As shown below in greater detail with the example of land legislation, village communities continued to recognise customary land rights despite the introduction of the Land Use Act in 1978, which redefined the legal position on land ownership in Nigeria. A company's ignorance regarding land titles may render it difficult to identify the correct receiver of compensation payments for land acquisition, which may lead to conflicts with the local people over land for oil operations (this will be explained in greater detail in section five of the thesis). In general terms, the existence of competing legal systems may thus lead to conflicts between oil companies and village communities.

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<sup>4</sup> Writing on African customary law, Gluckman (1965, 2-3) has stated that societies without any formal institutions of government such as courts and powers to legislate may have such *'well-established and well-known codes of morals and law, of convention and ritual, that even though they have no written histories, we may reasonably assume that they have persisted for many generations'*, so they are far from living in a state of lawlessness.

By implication, in order to reduce the quantity of community conflicts, oil companies must address the presence of customary law when dealing with village communities.

To sum up, in order to understand the impact of Nigerian law on community conflicts, it is instructive to analyse both the structure and the substance of the legal system as the two components play a different role. For this description of the Nigerian legal system, we use the three-fold typology of the pre-colonial, colonial and post-colonial law, as suggested in Allott's (1965, 220) analysis of African legal history. In other words, one could say that, substantively, Nigeria's cumulative legal system comprises three core elements: the pre-colonial, colonial and post-colonial law.

### **3.2. Pre-colonial Law**

Before the British government took possession of the African colonies, Nigeria (or rather the area of what later became Nigeria) was ruled by customary law. The development of the plurality of legal systems mentioned earlier ensured that customary law has continued to play a role in the Nigerian legal system until today.<sup>5</sup>

In theory, customary law is derived from ancient custom. In practice, as Allott (1965, 220) has pointed out, customary rules in Africa have sometimes been modified by the pronouncements of state, tribal and local authorities as well as by formulations of adjudicators and arbitrators.<sup>6</sup> Customary law in Nigeria is not a single uniform set of

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<sup>5</sup> While the main characteristics of the formal-legal institutions of colonial and post-colonial states were largely undisputed among academic scholars of law in Africa, African customary law became the main focus of study and a source of academic debate. The research on customary African laws was undertaken by both legal scholars (Sarbah 1968 - first published 1897, Danquah 1928, Allot 1960) and anthropologists (Schapera 1935, Gluckman 1965, Roberts 1972).

<sup>6</sup> Writing on the content of customary law in the actual enforcement process, several scholars (Chanock 1985, Snyder 1981) have argued that the so-called customary law implemented in 'native courts' was not necessarily a

Nigerian customs, but operates only within a tribe or a community living in the same area. As Park (1963, 65) has noted, there may also be local variations between communities of the same tribal group. Unwritten customary law on a particular matter in one part of the Ibo land, for example, is usually, but not always, the same as that in another part of the Ibo land. Written Islamic Law is also considered as customary law, although it originates from outside Nigeria, so it is not, strictly speaking, customary to Nigeria at all. In Northern Nigeria, Islamic Law has largely supplanted local customs (Park 1963, 65-68). The oil producing areas in south-eastern Nigeria, however, are almost exclusively non-Islamic, so Islamic Law is not relevant to this thesis. Tribal customary law is important to an understanding of oil related litigation because village communities in oil producing areas still tend to observe customary rules. From the perspective of oil companies in Nigeria, it may have been better if the oil reserves had been located in Muslim areas since Islamic Law is codified as well as being more static and more predictable. The dynamic and unpredictable nature of tribal customary law may lead to misunderstandings and thus conflicts between oil companies and village communities.

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relic of a traditional society but rather a historical construct of the colonial rule, influenced by a struggle between the colonisers and those colonised. In Senegal, for example, Francis Snyder (1981) has found that modernising elites often took a leading role in defining 'indigenous law'. In this context, the nature of law changed as it was reshaped from an adaptable traditional, mostly unwritten, system into fixed, formal and written rules enforced by native courts. Martin Chanock (1985), for example, has traced the development of customary law in Zambia and Malawi from the late 19th century to independence in the 1960s. His research demonstrated that customary law was reconstructed from a fluid, shifting set of principles and procedures to a fixed, written sets of codes. These written (or 'invented') codes, nevertheless, claimed continuity with an African past and were used as the basis for the formation of a new national legal system of the post-colonial state (Chanock 1985, 55). Far from being a set of pre-colonial African social rules, customary law became a historical product created by colonial administrators and the merging African elites who shaped the law to meet their own, often changing, political and economic interests (Chanock 1985, 145). While this type of research may have yielded important insights on the nature of the formal-legal institutions in Africa, it may have overstated the actual influence of colonial rule and its manipulation of local customary laws, particularly in Britain's West African colonies where virtually no European colonists settled.

Today, customary law is used in the so-called customary courts, which are headed by an indigene from the area who has special knowledge of local customs and traditions of the local people. With some exceptions, these courts only involve indigenes from the same community or the same tribe. Customary courts are thus never directly involved in litigation against oil companies. Those cases are always adjudicated by higher Nigerian courts, which make a different use of customary law. As Adaramola (1992, 73) has observed, contemporary customary courts accept customary law as given law, while higher courts accept Nigerian law and English Common Law as given law. As a result, customary law is merely treated as fact or evidence in a court case in a higher court, not as law (Adaramola 1992, 73). Since all court cases involving oil companies are located in a higher court, the significance of customary law is limited as far as oil related litigation is concerned. In other words, the venue of oil-related court cases limits the exercise of customary law in oil related cases.

Customary law, however, continues to be used in oil-related litigation when facts are disputed, for example, when the ownership of a piece of land is disputed. As Adaramola (1992, 73) has noted, in order to establish customary law in a higher court, witnesses must prove the existence of customary rules by oral evidence, alternatively books or manuscripts must be presented, which are recognised as established authority in the specific locality. Customary law can also be established by judicial notice (Adaramola 1992, 73), in which case the judge simply assumes that a customary rule exists without asking for evidential proof.<sup>7</sup> A customary rule is established within the legal context of a

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<sup>7</sup> As Park (1963, 92) has argued, certain customary rules and institutions become so well known to the judges that they no longer need to be proved. When these rules and institutions are established in a court case by judicial notice, they effectively cease to be questions of fact and are converted into matters of law.

particular case. For instance, a particular law of inheritance among the Ogoni may help a judge to establish the ownership of a specific house, which is disputed in a court case; but only after the customary rule was either accepted by the judge outright or was proved through oral or written evidence.

Courts may allow factual evidence of different type depending on the particulars of the case or the available evidence. In reference to land property, for example, Fatayi-Williams, J.S.C., in the case *Idundun v. Okumagba*<sup>8</sup>, defined five ways in which ownership of land may be proved in Nigeria.<sup>9</sup> First, ownership of land may be proved by traditional evidence. Second, it may be proved by production of written documents of title. Third, acts of the person (or persons) claiming the land such as selling, leasing or renting out a part of the land or farming on it, are also evidence of ownership, provided that the acts extend over a sufficient length of time and are numerous enough. Fourth, acts of long possession and enjoyment of the land may also be *prima facie* evidence of ownership. Fifth, proof of possession of connected or adjacent land may also be used to prove ownership. To sum up, evidence presented in court cases involving oil companies may combine elements of customary law and formal Nigerian law.

Not all customary rules are admitted by courts, however. In order to be recognised by Nigerian courts, customary law must, above all, fulfil a number of conditions. A customary rule is subject to four legal 'tests' of validity called the criterion of repugnancy, the criterion of incompatibility, the criterion of public policy and the

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<sup>8</sup> (1976) 9 & 10 S.C.

<sup>9</sup> As Aluko (1998, 14) has pointed out, however, the precedent in *Idundun v. Okumagba* does not apply where boundaries of the land between communities have previously been demarcated. In this case, the court will resolve the issue of ownership by referring to the boundaries demarcated, for instance, by a previous customary court ruling.

criterion of applicability. First, a customary rule is only valid, if it is not '*repugnant to natural justice, equity and good conscience*'. These terms are difficult to define, as Obilade has argued (quoted in Adaramola 1992, 74), but generally the purpose of the rule under colonial administration was to invalidate 'uncivilised' customs. The problem with the rule is that Nigerian judges can use the rule of repugnancy in an *ad hoc* manner, particularly if they perceive a particular rule as '*uncivilised*' or unjust. In one case, for instance, the Supreme Court invalidated a rule of Maliki Law that prevented persons accused of highway robbery from defending themselves.<sup>10</sup> Second, a customary rule is only valid, if it is not incompatible with any Nigerian legislation or regulation. As indicated earlier, certain customary rules may be abolished by legislation. For instance, Nigeria's Eastern Regional government eradicated the so-called Osu customary law. Under the Osu law, certain persons, known as 'Osu' (outcasts) were subject to legal and social disabilities. This practice was abolished by legislation in 1956 (Park 1963, 47). In addition to the explicit legislative abolition of customary rules, a rule may be invalid, if it is considered to be inconsistent with the intention of legislation, even though the piece of legislation did not expressly abolish the specific customary rule. For instance, in the case *Agbai v. Okogbue*<sup>11</sup>, Nigeria's Supreme Court ruled that a certain customary law was incompatible with Nigeria's Constitution.<sup>12</sup> Third, a customary rule is invalid, if it is

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<sup>10</sup> *Guri v. Hadejia Native Authority*, cited by Park (1963, 71).

<sup>11</sup> [1991] 7 NWLR.

<sup>12</sup> In that case, Samuel Okogbue from Abia State was invited to become a member in a so-called age grade in his community. In his community, it was a custom to group community members into age grades for the purpose of community development. The Amankalu age grade, to which Okogbue was assigned, decided to construct a community hospital and decided to impose a compulsory levy on its members in order to pay for the construction. Okogbue refused to join the grade and to pay the levy on the ground that he was a Jehovah's Witness. Upon his refusal to join the age grade and to pay the levy, members of the age grade entered Okogbue's premises and seized his sewing machine, claiming that they acted on the authority of the custom of the people. In the first



contrary to public policy, although this criterion is rarely used in Nigeria. On one occasion, it was held that the Yoruba law of legitimisation was contrary to public policy because it would encourage promiscuity (Adaramola 1992, 76). As Adaramola (1992, 74-78) has argued, the fourth criterion of applicability derives from the three above criteria. In order to be applicable, a customary rule must be shown to be in existence at a particular time and must be recognised and adhered to by the community. It is not enough for a custom to have been in use in the past, it must still exist and still be accepted. Any customary rule must fulfil all the above four conditions in order to be admitted by a judge of a higher court. However, even if a judge refuses to adopt a particular customary rule in a court case, the rule still remains law within the given community as it continues to be accepted as law within that community (Adaramola 1992, 74-78).

Nigerian judges may find it particularly difficult to adjudicate oil-related cases involving disputes over questions of customary law.<sup>13</sup> It is not always clear to what extent specific litigants still abide by specific rules of customary law. It is likely that customary law is less prevalent in bigger towns where members of different ethnic groups

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instance, the Magistrate Court ruled that a custom, which made it compulsory for a person to belong 'willy nilly' to an association, violated the 1963 Constitution. In addition, the court ruled that, since the plaintiff refused to join the age grade on religious grounds, a compulsory membership further violated his constitutional right to freedom of religion. On appeal, the High Court reversed the judgement of the Magistrate Court. The Supreme Court, to which the matter went from the Court of Appeal, agreed with the Magistrate Court that the above mentioned custom violated the Constitution. Said Nwokedi, J.S.C.:

*Much as one would welcome development projects in the Community, there must be caution to ensure that the fundamental rights of citizens are not trampled upon by popular enthusiasm.*

*These rights have been enshrined in the Constitution which enjoys superiority over local custom.*

<sup>13</sup> Section 217(2)(b) of the 1979 Constitution provided that at least 3 out of the 15 judges of the Court of Appeal must be learned in customary law. But the judges of the Court of Appeal, like those of any other court, are not likely to be knowledgeable in all areas of customary law. Since there are many systems of customary law in Nigeria, no Nigerian judge can be an expert on all areas of customary law. By implication, any courts except the local customary courts may find it difficult to adjudicate court cases involving the knowledge of customary law.



live side by side and have adapted to modern urban lifestyles. It is very likely that customary law is still prevalent in rural areas, particularly where communities are less exposed to modern lifestyles. But the use of specific customary rules may vary from community to community and is likely to change over time. The use of customary rules also varies according to the subject matter of dispute. A survey by Uwazie (1994) among rural and urban members of the Ibo ethnic group indicated that community members preferred to resolve disputes according to customary rules and informal channels of dispute-resolution, rather than through the country's formal legal system. According to the survey, potential litigants tended to use formal legal institutions, police and customary or higher courts, to handle cases of murder, injurious assault, grand theft, rape and divorce. However, they were least likely to resolve land disputes in courts. About 98% of the respondents said that they would solve land disputes in indigenous institutions, including village and family tribunals, while only 2% would seek redress from the courts or police.<sup>14</sup> These results suggest that informal modes of dispute resolution and

<sup>14</sup> Table: Survey among Ibos on the question 'To whom would you complain about the following cases?'

Type of Case	Complaint to Police or Court (percent)	Informal dispute resolution* (percent)	Total Number of Respondents
Land	2	98	212
Murder	76	24	208
Injurious assault	66	34	207
Grand theft	71	29	207
Petty theft	32	68	199
Minor assault	22	78	178
Adultery	15	85	179
Spousal abuse	4	96	178
Rape	71	29	147
Divorce	60	40	159

\* Includes village/family tribunals and other indigenous institutions

Source: Uwazie (1994).

customary law have survived in Nigeria, even though their use varies according to subject matter (Uwazie 1994).<sup>15</sup> The significance of customary law in disputes over land ownership is particularly important to oil companies since the acquisition of land rights in rural areas plays a key role in oil operations.

To sum up, customary law is likely to continue playing a limited role in oil-related litigation as far as factual evidence is concerned. But the use of customary law is severely constrained in court cases involving damage from oil operations. Oil related cases are located in higher courts, in which legal rules are derived from colonial and post-colonial law, so litigants from village communities cannot rely on the legal principles of customary laws with which they are familiar. Local customary laws designed to protect the village communities such as customary environmental laws are not effective in oil related cases.<sup>16</sup> In this sense, the legal system is biased against village community litigants.

### 3.3. Colonial Law

The imposition of colonial rule in Nigeria resulted in the introduction of English law. The Nigerian post-colonial state inherited the general formal-legal structure of the colonial period which has formally continued to form the basis of the Nigerian legal system until today.

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<sup>15</sup> Uwazie (1994) has concluded in general that *'despite the rise of national legal systems in Africa, indigenous modes of justice persist'*. In the context of Nigeria, Uwazie has concluded that the future of indigenous justice seems assured despite the impact of economic development, missionary activity and Western education.

<sup>16</sup> As Douglas (1997) has shown, Niger Delta communities recognise a multitude of environmental customary laws aimed at protecting their environment. These include laws for the protection of forests, the soil and the aqueous environment.

English law introduced in Nigeria comprises English Common Law, the so-called doctrines of equity and various British statutes. Some of the British statutes have ceased to be in force. Some of them have been specifically repealed and replaced by Nigerian legislation. English statutes only apply in Nigeria in so far as local circumstances and the Nigerian legislation permit and these are mainly very old statutes which were operating in England before 1900. In theory, English Common Law and doctrines of equity formally apply in Nigeria as they exist in England today. Until the establishment of the Supreme Court of Nigeria, the Judicial Committee of the Privy Council in Britain acted as the highest court for Nigeria. As Obilade (1979, 123) has noted, court decisions of the Privy Council given before the establishment of the Supreme Court are still binding on Nigerian courts, which means that a Nigerian court must follow them. Park (1963, 62-63) has argued that contemporary decisions of the British House of Lords are also binding on Nigerian courts as they '*present the conclusive expositions of English law and that being so it will not be open to the Nigerian courts to depart from them*'. This view has been put into question by Obilade (1979, 134).<sup>17</sup> While it is not entirely clear to what extent the Nigerian legal system is still embedded into the English Common Law, the structural character of the legal system is firmly based on the legal principles of the English Common Law.

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<sup>17</sup> Obilade (1979, 134) has argued that '*no English court forms part of any Nigerian court hierarchy. Therefore, no Nigerian court is bound by a decision of any English Court under the doctrine*'. Obilade (1979, 134-135) has concluded that decisions of English courts can only have a persuasive authority on Nigerian courts, that means, a Nigerian court can decide whether to follow an English precedent or not. In any case, the Nigerian legal profession and the judiciary continue, to a large extent, to accept English court precedents as guiding principles in their work. Nigerian legal textbooks also continue to rely on many English rather than Nigerian court cases. The use of English court precedents depends on the area of law. In some areas of law, English court precedents are used almost exclusively. For instance, a textbook on tort law by Kodilinye (1982, 190-194) cited English court cases on the issue of trespass to chattels 21 times, while it cited Nigerian court cases only twice.

In practice, however, it is unclear how far African legal systems have deviated from the English Common Law doctrine. Allott (1960, 24-25) has argued that practically all African legal systems allow for some modification of English law. In addition to the inherent possibility of judges modifying legal rules, colonial and post-colonial statute law in Africa contained express provisions, which allowed for substantial changes in the law applied. Article 17 of the Tanganyika Order in Council, for example, referred to by Allott (1960, 22), stated that *'the said common law, doctrines of equity and statutes of general application shall be in force in the territory... subject to such qualifications as local circumstances may render necessary'*. The Nigerian Constitution 1979, for instance, was interpreted by courts as having abolished the distinction between the so-called 'public' and 'private nuisance' in Nigeria, a distinction which persists in England.<sup>18</sup> More importantly than statute law, as Allott (1960, 24-27) has shown, African judges had a great scope to modify English law in the African context, which is why we do not know to what extent Nigerian law can still be called English Common Law.

While Nigerian judges observe English court judgements made in the past, they also rely heavily on Nigerian judicial precedents. To a large extent, the application of English Common Law and the doctrines of equity in Nigeria ties judicial decisions to the pattern of legal development in England. Nevertheless, like in most other post-colonial states in Africa, Nigerian judges may reject an objectionable rule of English law outright

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<sup>18</sup> Karibi-Whyte, J.S.C. pronounced: *'The restriction imposed at common law on the right of action in public nuisance is inconsistent with the provisions of section 6(6)(b) of the Constitution, 1979 and to that extent is void.'* Per Karibi-Whyte, J.S.C. in *Adediran v. Interland Transport* [1991] 9 NWLR at page 180. Karibi-Whyte, J.S.C. further stated: *'Having held that in the institution of actions, the distinction between public and private nuisance in this country has been abolished by the Constitution 1979, the exercise of the right of action for nuisance is no longer based on or determined by the distinction.'* Per Karibi-Whyte, J.S.C. at page 182. In other words, the 1979 Constitution clearly abolished the common law distinction between public and private nuisance as far as the right to institute actions in nuisance before Nigerian courts is concerned.

and adapt or modify the objectionable rule, which can lead to considerable modification of English precedents (Allott 1960, 24). Nigerian judges often cite Nigerian precedents rather than English ones even if the same legal rule applies. In the case *Shell v. Farah*<sup>19</sup>, for instance, the judge of the Court of Appeal cited 36 Nigerian court cases and only 12 foreign cases. A number of procedural practices also differ. For instance, Nigerian judges have on some occasions physically visited the site of a disputed subject matter in a civil court case, a practice uncommon in England. Most important of all, Nigerian precedents sometimes apply somewhat different legal rules from English ones. The greatest difference between Nigerian judicial precedents and the English Common Law is that Nigerian courts make limited use of Nigerian customary law, which stems from the need to adapt English law to the actual reality of Nigerian society. In referring to Africa in general, Allott (1960, 25) has argued that it would be indeed impossible to leave English law unadapted in the face of different social norms and customs in Africa.<sup>20</sup> Like property law in several other West African countries, Nigerian property law, for example, is quite different from English law as far as land ownership is concerned, which finds an expression in Nigerian court precedents. As Daniels (1964, 377-378) has pointed out, transactions in land may be governed either by the received English law or by the appropriate customary law.<sup>21</sup> As shown in the sub-section on land law below, Nigerian

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<sup>19</sup> [1995] 3 NWLR.

<sup>20</sup> Writing on the local modification of colonial law in Africa, Allott (1960, 25) has concluded: '*The most important single factor requiring the adaptation of English law is the existence of local African populations, to whom the English law is to be applied. The African populations are living under their own forms of society, having their own customs, own religion, beliefs, social organisation, patterns of marriage and divorce, land law, etc. How can English law be applied to them unadapted?*'.

<sup>21</sup> English law was usually applied '*where English conveyancing forms have been used to transfer land*' (Daniels 1964, 377). On the other hand, land originally held under customary law is not necessarily converted to land held under English law as a result of subsequent transactions. In a number of West African court cases under colonial

court precedents continue to recognise the existence of communal and family land ownership, which exists under Nigerian customary law, but not under the English Common Law.

Irrespective of the degree to which the Nigerian legal system has deviated from the traditional English Common Law, the introduction of the Common Law has often been regarded by scholars and administrators as inherently conducive to economic development. In general terms, Posner (1986) has argued that the Common Law is economically efficient. Posner (1986, 229-230) has stated that the Common Law doctrines '*form a system for inducing people to behave efficiently, not only in explicit markets but across the whole range of social interactions*'. This 'efficiency theory of the Common Law' does not imply that every Common Law rule is inherently efficient. Posner (1986, 21), for instance, merely suggests that the '*Common Law is best (not perfectly) explained as a system for maximising the wealth of society*'. According to Posner (1986, 230), one example of an efficient Common Law rule is the doctrine of the 'eminent domain', which allows private companies to compulsorily obtain private property for the sake of economic development. While the doctrine limits private property rights, Posner (1986, 230) has argued that it allows a value-maximising exchange.

In the African context, both radical and liberal scholars have agreed that the introduction of the Common Law was conducive to capitalist development.<sup>22</sup> Nigerian

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rule, it was held that customary law applied to a transaction, although a mortgage was executed in accordance with English law (Daniels 1964, 377-378).

<sup>22</sup> The role of law in Africa's socio-economic change has been directly addressed by several scholarly studies (Seidman 1968; Ghai *et al.* 1987). According to radical scholars such as those in the edited work of Ghai *et al.* (1987), received colonial law was indeed seen as a precondition for capitalist development in Africa as it served to integrate peripheral areas into the world economy. According to more moderate scholars such as Allott *et al.*



legal scholars have often supported the retention of British colonial law (as opposed to a re-enactment of African customary law) after the country's independence from Britain because of its perceived benefits to business. T.O. Elias (1989, 5), Nigeria's most eminent legal scholar to-date and former Chief Justice of Nigeria, has argued that the main function of jurisprudence in a developing society was indeed '*to promote economic growth and social well-being*'. From the perspective of oil companies and other private enterprises, the legal continuity ensured through English Common Law, particularly English commercial law, was considered the best method of promoting economic growth as African customary law was considered incapable of providing a coherent framework for commercial transactions. Said A.A. Schiller: *It is generally recognised that the indigenous systems of law in Africa are deficient in the areas of commerce, finance and social welfare. Further, the indigenous law is considered inadequate in the field of obligations and property* (quoted in Seidman 1968, 31). English common law, supplemented by statute law such as petroleum legislation, has therefore continued to guide the economic decisions of oil companies. From the perspective of oil companies, the introduction of English law into Nigeria was beneficial as companies required a stable legal framework in order to make investments with some degree of security. Furthermore, in legal disputes with village communities, oil companies are able to use legal principles of Common Law with which company lawyers are familiar rather than

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(1969, 11), '*legal development does not keep exactly in step with socio-economic development; and that more general development itself is not precisely phased in all its parts*'. However, judge-made law as well as legislation is likely to keep law in some accord with socio-economic developments. The problem Allott *et al.* faced was that of a time factor: when does the judicial or popular disregard of a traditional rule mean that the rule is abrogated and loses the force of law? Individual Kipsingis in Kenya, for example, began to enclose and appropriate community grazing lands, which raises the question at what point in time does what was originally a flagrant disregard of established rights become an approved method of acquiring property? Allott *et al.* (1969, 11-12) concluded that there is generally a time-lag between social and legal evolution.



customary laws. The introduction of English law into Nigeria was hence ultimately to the advantage of oil companies.

### **3.4. Post-colonial Law**

The basic framework of colonial law as well as the plurality of legal systems have largely remained in place in African post-colonial states, as Jacques Vanderlinden (1983, 95) has argued. According to Vanderlinden (1983, 95), most legal modifications have been undertaken in the area of public law. Most importantly, as Vanderlinden (1983, 97) has noted, the formal legal structures became in theory accessible to all citizens, while hitherto they were merely accessible to non-Africans and a small group of 'civilised' Africans. In practice, however, the formal legal system has been opened to the Europeanised parts of the population, mostly in urban areas, while the rural majority continued to rely more on customary law and its institutions (Vanderlinden 1983, 97). As a consequence for the oil industry, members of village communities in oil producing areas were allowed to use the general law courts, if only in theory, to freely litigate against oil companies in the formal legal institutions.

In the former British colonies in Africa, as Allott (1965, 222) has argued, the most striking changes to the legal system occurred with regards to the unification of the courts systems, which involved four main changes. First, the appellate court structure was integrated by permitting appeals from lower, formerly 'native', courts to the superior courts. Second, the practice and procedure of the formerly 'native' courts was anglicised and standardised, by applying the procedure of the general, formerly British, law courts.

Third, the laws administered by courts were harmonised by applying statutory law in the local courts and customary law in the general law courts. Fourth, the jurisdiction of local courts was extended to non-Africans in some places (Allott 1965, 222).

While the Common Law has remained the basis of the formal-legal structure in Nigeria, the post-colonial Nigerian state introduced a multitude of statutes. Nigerian statute law comprises statutes and subsidiary legislation, both at the federal and the state level. From the beginning of military rule in 1966, the legislative powers of the federal government were gradually expanded at the expense of state governments. Most of the important matters of government are within the Exclusive Legislative List established by the Constitution of 1979. States may only legislate on matters not on the Exclusive List. Any state laws may be declared inconsistent with the Nigerian Constitution. The Exclusive Legislative List includes '*mines and minerals, including oil fields, oil mining, geological surveys and natural gas*'.<sup>23</sup> That means, the federal government has the exclusive right to legislate on any issues related to the oil industry. The federal government and state governments sometimes delegate power to government officials, departments or other public authority to make subsidiary laws. These are regulations and orders to supplement the so-called primary legislation or statutes. For instance, the federal government established the Petroleum Act 1969 which can be considered as primary legislation, while the minister responsible for petroleum affairs established the Petroleum (Drilling and Production) Regulations of 1969 which can be considered as subsidiary legislation. The Petroleum Act established a general legal framework for oil companies, while the Regulations established specific legal provisions for oil operations.

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<sup>23</sup> Constitution of the Federal Republic of Nigeria 1979, schedule 2, part I, Exclusive Legislative List, item 37.

In general, if judged by the evidence from secondary sources, the evolution of post-colonial law, both statute law and judicial precedents, does not appear to support the 'efficiency theory of the Common Law'. First, the existence of the rentier state meant that the formulation of legal rules did not follow a completely nationalist agenda. By implication, it could be expected that legal rules were on occasion beneficial to the ruling elite and the oil companies at the expense of economic development in Nigerian society as a whole (see section two of the thesis). Second, the Common Law was generally biased in favour of corporate interests.<sup>24</sup> Most important of all, the introduction of Common Law in Nigeria put commercial capitalist interests expressed in Common Law doctrines above the rules of Nigeria's customary law. For instance, in Nigeria, the doctrine of the 'eminent domain', mentioned by Posner as an efficiency maximising device, often led to the expropriation of land of village communities by the government for the benefit of foreign oil companies at an inadequately low cost (as will be shown in greater detail in the sub-section on land law below).

The example of the environmental law and the Federal Environmental Protection Agency (FEPA) is indicative of the inherent contradictions in the making of post-colonial

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<sup>24</sup> In general terms, some scholars in the field of sociology of law would argue that law usually serves as a vehicle of domination by the ruling classes. As a prototypical exponent of this view, Alan Hunt (1993, 21) has argued that '*law plays an important part in sustaining the domination of the ruling class*'. Hunt has distinguished between coercive and ideological domination. Coercive domination refers to the organised power of the state (including courts, the prison system and the police) which may be used to coerce individuals or groups to behave in a certain manner. According to Hunt, the main application of coercion is to protect the 'general conditions' of the capitalist order, above all, to protect and reinforce the capitalist property relations. Ideological domination refers to activities and processes whereby (in Hunt's words) '*the assent of the existing social order is produced and mobilised*' (Hunt 1993, 25). Law is said to transmit ideological attitudes and values prevalent in society. These attitudes and values in turn reinforce and legitimise the existing social order. Coercive and ideological domination are closely related. For instance, the coercion of an offender reinforces the general values and attitudes associated with the existence of private property in society as a whole. As shown in this section of the thesis, evidence on both substantive law and the structural character of the legal system provides substantial support for the view that Nigerian law is a vehicle of domination for the ruling elite. The elite's economic well-being is in turn dependent on the corporate interests of foreign oil companies. It could be argued that the elite is thus inevitably compelled to protect those corporate interests by using law or other means available.

law (as shown in greater detail in the sub-section on environmental law below). Before the establishment of the FEPA, the Common Law doctrines proved as largely insufficient to curb environmental pollution by oil companies. This was despite the fact that village communities in the oil producing areas were adversely affected by oil operations without receiving adequate compensation from oil companies. The formation and the continuing existence of the FEPA were a result of a nationalist agenda in policy-making and of popular pressures at the micro-level. However, the non-enforcement of FEPA rules in the oil industry could be seen partly as a result of an alliance between the Nigerian elite and the foreign oil companies. This may help to explain why environmental rules were usually not properly enforced, although Nigeria as a whole was losing billions of dollars in revenues due to financial losses from gas flaring and oil spills. The case of the Nigerian environmental law and the FEPA questions the view that the Common Law is efficient.

While the economic efficiency of the Common Law is questionable in the Nigerian context, the post-colonial legal system confirmed the applicability of Common Law to Nigeria as opposed to the re-introduction of customary law. As previously argued, the displacement of customary rules in higher courts and the introduction of English law ultimately prejudiced the legal system in favour of oil companies and against the community litigants.

Until today, the legal rules of both the colonial and post-colonial law have continued to determine what is possible in legal disputes between oil companies and village communities. In the context of oil operations, the most relevant substantive rules are statutory. They include statutes on land, petroleum matters and the environment,

which we examine in some detail below. Of those three types of statutes, Nigerian land legislation is the oldest.

### 3.5. Customary Land Rights and Land Legislation

Land acquisition is a precondition for oil operations since crude oil is located under the earth's surface. While land legislation determines the legal principles of land acquisition for economic activities, land allocation in village communities continues to be regulated by customary land rights. Oil companies are legally bound to pay monetary compensation for land acquisition, so they are forced to deal with customary landowners and/or their tenants in the course of acquiring land.

From the point of view of oil companies, proof of land ownership can be difficult in Nigeria's rural areas as land is usually held according to local unwritten customary laws, which differ from tribe to tribe and from village to village. Above all, the Western concept of '*ownership*' is in itself foreign to Nigerian customary law and was introduced into Nigeria under British rule.<sup>25</sup> Customary law distinguishes, nevertheless, between some sort of permanent land ownership and mere possession of land. In the case *Shell-BP v. Abedi*<sup>26</sup> in 1974, the plaintiffs sued Shell-BP for having damaged a piece of land previously cultivated by them. The Abadiama people claimed that they were the land owners. The trial judge established that the plaintiffs were '*in actual occupation of the land*' but were not '*de jure owners of the land*'. In other words, they were merely

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<sup>25</sup> On problems of terminology, see, e.g., James (1973, chapter 2).

<sup>26</sup> (1974) 1 All N.L.R.

customary tenants, while the people of Gbekebor were the owners. The plaintiffs would have won compensation, if they had pleaded possession of the land rather than ownership and if they had successfully provided a proof of an agreement of tenancy. They lost the case on appeal because the basis of their claim was as owners of the land so they could not claim compensation as customary tenants. Said the appeal judge that '*A de facto possession of land gives right to retain the possession and to undisturbed possession of it as against all wrong doers but it is not sufficient against the lawful owner or those claiming under the lawful owner*'. Although one must remember that customary rights may sometimes be ambiguous, the Abedi case indicates that customary law distinguishes between ownership and mere possession of land and that land can be leased to a tenant.

The nature of ownership under customary law is different from Western concepts of ownership. In the West, ownership relates to a named individual or a group of individuals, who can administer, rent out or sell a particular plot of land. In Nigeria, on the most basic level, the land is traditionally held by village communities or families, not by individuals. A useful starting point is the court judgement in *Tijani v. Secretary of Southern Nigeria*<sup>27</sup> of the early 1920s, in which Viscount Haldane said:

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<sup>27</sup> (1923), 4 N.L.R. 18.

*The next fact which it is important to bear in mind in order to understand the native land law is that the notion of individual ownership is quite foreign to native ideas. Land belongs to the community, the village or the family, never to the individual. All the members of the community, the village or family have an equal right to the land, but in every case the Chief or Headman of the community or village, or head of the family, has charge of the land, and in loose mode of speech is sometimes called the owner. He is to some extent in the position of a trustee, and as such holds the land for the use of the community or family. He has control of it, and any member who wants a piece of it to cultivate or build upon, goes to him for it. But the land still remains the property of the community or family. He cannot make any important disposition of the land without consulting the elders of the community or family, and their consent must in all cases be given before a grant can be made to a stranger (quoted in Elias 1971, 72).*

In line with the above judgement, this thesis makes the distinction between communal, family and individual land. Communal land belongs to all members of the village community. By customary law, each member of the community is entitled to acquire a portion of land, which is usually used for agricultural purposes. Members who seek grants of communal land must approach the chief who decides on their applications. The Chief or Headman is not an owner of communal land but merely a quasi trustee. The most important prerogative of the chief is distribution of land, in particular virgin land.



Grants of land are usually made subject to conditions which may vary according to tribe or village and relate to the length and form of grant. For instance, in Ebiama, an Ijaw village, parcels of land were held indefinitely as long as they were farmed, while in some other Ijaw communities land was usually redistributed among its members every year. In the same manner, the laws of succession vary according to tribe and village.<sup>28</sup> Land may have to be returned to the community after a period of time depending on local customary law such as after one farming season or after the death of the occupiers. When land is returned to the community, it may be reallocated once again. The chief has the right to revoke a grant of land and to evict the occupier under certain circumstances, in which case the land is returned to the community.<sup>29</sup> In any land conflicts involving communal land, the chief legally represents the community to the outside world.<sup>30</sup> However, a chief's powers as a trustee are limited. He cannot sell communal land without the consent of the community members. Any money collected by the chief on behalf of communal land must be shared within the community.

Real world forms of ownership, as opposed to the world of legal categories, may be even more complex. Leis (1972, 16) has described an Ijaw village in the Niger Delta where most farm land and fishing sites are owned by sections and subsections of the village rather than by the village at large. But in those cases one can also speak of communal land. Family property in Nigeria is distinct from communal property and requires an understanding of the distinction between a family and a community. On the

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<sup>28</sup> On general laws of succession in Nigeria, see, e.g. Okoro (1966).

<sup>29</sup> On the right of revocation and eviction, see Elias (1971, 87-96).

<sup>30</sup> On the chief's representative status, see Elias (1971, 84-86).

most basic level, a family is understood here as a kinship group of people who trace descent from the same ancestor, who usually live together and share the economic benefits of the same area of land.<sup>31</sup> The smallest family can be composed of only a man, his wife or wives and their children, but a family can have many more members related through marriage, kinship or adoption. The composition of a family and the rights to family land are determined by local custom and can vary considerably according to tribe and community, but a family is always a kinship group. In contrast, a village community is a settlement inhabited by families linked by common economic, cultural and historic relationships, not necessarily kinship.<sup>32</sup> A chief or a headman is a leader within a community, while a family head exercises family rights within the family.

Communal land can become family land through allotment by the chief, that means, the communal land is partitioned and is henceforth controlled by the family. An allotment is different from the mere allocation of communal land to a family for cultivation because it means permanent transfer of ownership.<sup>33</sup> In the case of allocation, land is allocated to a family for a period of time after which it is returned to the community for reallocation. However, family heads sometimes claim allocated plots as family land after a few generations, especially when no one in the community can remember the original land allocation (James 1973, 56). In effect, as James (1973, 46) has

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<sup>31</sup> In everyday speech, the word 'family' usually refers to a group of people linked together by kinship, irrespective of whether or not they live together. Since one could go a long way back in tracing descent, the common sense meaning of the word 'family' cannot form the basis of any sociological inquiry. In this study, the word 'family' only refers to persons who are linked by close kinship bonds, live together and typically engage in common economic activities. On the basic concepts of rural sociology in general, see Galeski (1972).

<sup>32</sup> Oral history of Nigerian villages sometimes traces the community's distant origins from a common ancestor, but its value is largely symbolic.

<sup>33</sup> Elias (1971, 84) used the term '*partition of land*' rather than allotment. However, the use of different definitions should not obscure the issues. Whether one speaks of partition, allotment or gift, the meaning signifies permanent rather than temporary transfer of ownership.

argued, with increased population and allotment of communal land to families, there has been a gradual shift from communal to family land holdings in Nigeria.

The family head, usually the oldest male member of the family, is in charge of distributing family land. He allocates plots to family members and others for cultivation, collects the rents and represents the land in disputes with outsiders. The rights of a family head over family land are much the same as that of a chief in charge of communal land (Elias 1971, 107). However, if the entire family dies out or if the family land is abandoned, the land holdings are returned to the community and may be reallocated once again.

Land rights in Nigeria remain collective, whether communal or family-based, but they have become increasingly more individualised. As indicated earlier, the rapid increase in population has led to an increased pressure on land and land conflicts may arise as a by-product. Typically, a farmer may insist on being allowed to farm on the same plot where his ancestors did. Since the land value increases, even smaller sections of the community may acquire the right to alienate land by lease or sale to individuals. As a consequence, land shortage often leads to increasing individualisation of land holdings. In West Africa, this process has probably advanced most among the Ibos of south-eastern Nigeria with population densities of one thousand per square mile and more (Lloyd 1980, 96-97). Collective land rights have, nevertheless, continued to exist during the colonial period and after independence.

The colonial administrators recognised the existence of collective land ownership in Nigeria, even though they generally held that a change towards Western-style

individual land rights was both inevitable and beneficial to Nigerians.<sup>34</sup> Since no white British settlers in Nigeria ran large-scale plantations, in contrast to Eastern Africa; the British colonialists largely refrained from expropriating the land of the Niger Delta tribes. However, colonial mining legislation vested the ownership of natural resources such as oil in the colonial state. The Minerals Ordinance 1916 provided that *'The entire property and control of all minerals, and mineral oils in, under or upon any lands in Nigeria, and of all rivers, streams and watercourses throughout Nigeria, is and shall be vested in the Crown'*.<sup>35</sup> After Nigeria's independence, oil rights remained vested in the state under section 1 of the Petroleum Act 1969.

Oil rights, however, were distinct from land ownership. Oil companies could only get access to the oil resources by applying to the government, not the local land owner, for a licence (see section two of the thesis). In return, the oil company paid rents and royalties to the government. Once an oil company obtained an oil licence from the government, it had to separately negotiate with the village community or families over the sale or the lease of specific pieces of land. That means, the government reserved for itself sole right to dispose of oil resources, while the land itself was left in the hands of the local people, a distinction which largely survived until 1978.

Oil companies encountered problems in dealing with collective land rights because the chiefs as protectors of the tribal heritage were sometimes unwilling to sell or allocate tribal land to outsiders. Europeans already encountered the problem in the pre-colonial

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<sup>34</sup> Frederick Lugard, Nigeria's first Governor in the period 1914-1919, stated that *'conceptions as to the tenure of land are subject to a steady evolution, side by side with the evolution of social progress, from the most primitive stages to the organisation of the modern state'*. He continued: *'These processes of natural evolution, leading up to individual ownership, may, I believe, be traced in every civilisation known to history'* (Lugard 1965, 280-281).

<sup>35</sup> Section 3(1).

era when collective land holding hindered European penetration of the African interior. The Castle of Sao Jorge di Msia, the most important base of the Portuguese in pre-colonial West Africa, was accordingly built not on purchased but on leased land because the local ruler opposed the sale of land (Dike 1956). Since land owners were often reluctant to sell or allocate land to outsiders, including land for oil operations and may have taken an uncompromising stance in negotiations with oil companies over compensation, the government in Nigeria gradually introduced specific legislation in order to compulsorily acquire land for economic development.

Until the promulgation of the Land Use Act in 1978, nonetheless, the government was not legally empowered to expropriate land for the private need of oil companies. It was only empowered to expropriate land for public purposes by the Public Lands Ordinance 1876, later re-enacted as Public Lands Acquisition Act 1917, and other similar statutes. In cases of land acquisition, compensation was to be paid to the owners (Olawoye 1982, 15-16). Despite the legal limitations, the government had often compulsorily acquired land for oil companies before 1978 under the so-called 'power of eminent domain', that means, the power to seize private property for public use. Oil operations were generally considered by the government to serve 'public interest'. Both the Oil Pipelines Act 1956 and the Petroleum Act 1969 specifically provided for powers of 'eminent domain' provided that compensation was paid to the land owners.<sup>36</sup>

In the court case *Nzekwu v. Attorney-General East-Central State*<sup>37</sup>, for example, the Ogbo family sued the government for compulsory acquisition of their land. According

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<sup>36</sup> Oil Pipelines Act 1956, sections 19(4) and (5); Petroleum Regulations, section 17(1)(c).

<sup>37</sup> (1972) All N.L.R.

to the government representatives, the land acquisition was intended for 'economic development' of the area. At the time of public acquisition, ownership of the land was disputed between the people of Onitsha and the people of Obosi. Christian Onyedike, chartered surveyor and government witness at the trial, said that '*it was a big risk for an investor to invest his money on it [the land] for fear that if his vendor lost his claim he would lose his money*'. This quote appears to restate one of the main rationales behind compulsory land acquisition in Nigeria in general. Compulsory land acquisition allows land to be developed economically notwithstanding the conflicting claims of different land owners. In the Nzekwu case, the plaintiffs did not refuse to deal with the oil companies or the government but demanded higher compensation than they were actually offered.

The above case and similar ones exemplify that land owners did not necessarily challenge compulsory land acquisition for oil operations, but were often more concerned with the quantum of compensation owed to them.<sup>38</sup> Until 1978, however, the land owners were able to challenge compulsory acquisition by suing the government, even though it is unclear whether many owners took this course of action. An important case was *Ereku v. the Military Governor of Mid-Western State*<sup>39</sup>, in which the Itsekiri Communal Land Trustees and other community representatives sued the government for expropriation of land on behalf of McDermott Overseas, an oil company sub-contractor. In that case, McDermott attempted to acquire approximately 50 acres of land near Igbudu in the then Warri Division of the Delta province in the Mid-Western State of

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<sup>38</sup> In the case *Aghenghen v. Waghoreghor* (1974) All N.L.R., two communities were engaged in a dispute concerning a compensation payment for land compulsorily acquired for Shell-BP's oil operations. Another example is the case *Okwuosa v. Adizua* 1 IMSLR (1977), which involved a dispute on the compensation payment for land compulsorily acquired for Agip's oil operations.

<sup>39</sup> (1974) 10 S.C.



Nigeria for the company's operations. In April 1966, the government published an acquisition notice declaring that the land had been acquired for public purposes under the Public Lands Acquisition Law of Western Nigeria 1959. Subsequently, the government granted a lease for 99 years to McDermott. The plaintiffs sued the government seeking a declaration that the notice of acquisition was invalid and seeking an order setting aside the compulsory acquisition. They lost in the first instance, but won the case on appeal to the Supreme Court. The lawyers representing the government had argued that the oil company benefited the public not least because it *'employs a large number of Nigerians'*. The court was unmoved by those arguments and declared that the government was not empowered to acquire land for McDermott even though the court pronounced that the company had the same objectives as the government and served the Nigerian public. It held that the acquisition was on behalf of a private company and not the government. T.O. Elias, Chief Justice of Nigeria, accordingly allowed the appeal and declared the notice of acquisition *'unconstitutional, ultra vires and void'*.

The Supreme Court went even further declaring that the Public Lands Acquisition Law (Amendment) Edict 1972, of Mid-Western State, was invalid. The Edict was specifically introduced by the government of the Mid-Western State in order to allow expropriation of land on behalf of private companies. The Edict allowed compulsory land acquisition *'required by any company or industrialist for industrial purposes'*, which broadened the meaning of *'public purpose'*. The Supreme Court declared that the Edict was *'unconstitutional, ultra vires and void'*.



The above case reveals some of the potential legal difficulties that oil companies could encounter in acquiring land for economic development before 1978. The situation changed dramatically with the promulgation of the Land Use Act 1978. The 1978 Act vested the ownership of all land within a state in the state governor. The most important provision of the Act read:

*Subject to the provisions of this Decree, all land comprised in the territory of each State in the Federation are hereby vested in the Military Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Decree.*<sup>40</sup>

The Act makes explicit references to the oil industry. In particular, section 28 stipulates that the military governor can revoke a right of occupancy for 'overriding public interests', which included the 'requirement of the land for mining purposes or oil pipelines or for any purpose connected therewith'.<sup>41</sup> These provisions empowered the governor to use any land holdings in Nigeria for oil operations. In theory, a governor could legally acquire the entire state territory and then assign it to a single company. In practise, the procedure for acquiring land for oil operations did not change significantly. Before and after 1978, an oil company had to acquire an oil licence for a given area. Subsequently, the company approached the State Ministry of Lands in order to work out the conditions for entry into the land in question and the compensation to be paid to communities (Ajomo 1982, 339). In this respect, little changed for oil companies.

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<sup>40</sup> Section 1.

<sup>41</sup> Sections 28(1), (2c) and (3b).

However, there have been major changes which concern village communities. First, a community has no right to question the entry of an oil company onto their communal land. The governor can acquire any land on behalf of private or public oil companies. The precedent established in *Ereku v. the Military Governor of Mid-Western State* no longer applies. Second, compensation for land is paid to the governor and no longer to the community. A distinction is made between compensation for land and compensation for improvements on land. Until 1978, oil companies either paid annual rent to the land owners for the use of their land or purchased a plot of land. In addition, they were legally bound to make compensation payments for any improvements on the land such as destroyed buildings and crops. Since 1978, oil companies have merely paid for improvements on the said land (Omotola 1980, 38-39). In practice, a community only receives a single payment, if any, from the oil company when something has been destroyed. Third, according to the Land Use Act, no court has the jurisdiction to inquire into any question concerning the adequacy of compensation paid to land owners (Ekemike 1978, 16).

From the perspective of the oil companies, the Land Use Act brought advantages and disadvantages. Perhaps the main advantage is that community conflicts or prolonged negotiations over land can no longer delay land acquisition for oil operations. Previously, conflicts over land could delay oil operations. For instance, in the case *Ereku v. the Military Governor of Mid-Western State* described earlier, McDermott's operations were delayed by a local dispute with the Itsekiri Communal Land Trustees. From the perspective of oil companies, compulsory land acquisition by the government renders the

process of acquiring land quicker and more efficient. A key disadvantage of the Land Use Act for companies is the payment of rent to the governor rather than to the actual land owners. Since the land owners receive less compensation from the companies, they may become more aggrieved by oil operations. It could be more beneficial for an oil company to pay compensation to the actual land owners rather than to the governor in order to prevent any potential dissatisfaction with oil operations within the community (section five of the thesis discusses the link between such dissatisfaction and community protests against oil companies, which can disrupt oil operations).

On the whole, the advantages to oil companies appear to have outweighed the disadvantages. The Land Use Act has allowed the government and oil companies to obtain land for economic development, which was one of the key objectives of the Act. In 1977, Brigadier Musa Ya'Ardua said at the inauguration of the Land Use Panel that *'Both the Anti-Inflationary Task Force and the Rent Panel Reports identified land as one of the major bottlenecks to development efforts in the country'* (quoted in Olawoye 1982, 14). By implication, the 1978 Act eliminated this bottleneck.<sup>42</sup>

In terms of customary law, the Act has changed little. Admittedly, there has been confusion among lawyers as to the true meaning of the Act.<sup>43</sup> In particular, according to the Act, a community, a family or an individual no longer owns the land but has a mere

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<sup>42</sup> Even though the Act is beneficial to oil company interests, there are no indications that oil companies lobbied for a change in Nigeria's land use legislation. Said Olisa Agbakoba, a prominent Nigerian lawyer:

*Clearly, the reason behind the Land Use Act was to acquire land for what the government considered the economic development of Nigeria. Because of customary rights, land was not readily available for oil exploration or other activity. So, clearly, the Act benefits the oil companies, but one cannot say that there is a link between oil company activities and the Act* (Personal interview with Olisa Agbakoba, Lagos, February 1997).

<sup>43</sup> Among other things, there was a long standing argument between lawyers over whether the Land Use Act amounts to the nationalisation of land in Nigeria by the state. See, e.g. Umezulike (1986).

right of occupancy. Despite the promulgation of the Land Use Act and despite growing pressures on land, there is strong evidence that land owners' attitudes to land have not changed markedly and collective land rights persist in Nigeria's rural areas.<sup>44</sup>

Interesting evidence on land ownership is provided by a survey conducted by Winston Bell-Gam (1990) in the Bonny Local government Area.<sup>45</sup> The survey is of interest to the present study because Bonny Island has served as the site of Shell's crude oil export terminal for several decades (SPDC 1995). According to the survey, in the Bonny area, 53.8% of the land used for house construction was virgin land allocated by the local chief and 26.7% was land inherited by the present owner. Only 6.9% of the land was purchased by the owner (Bell-Gam 1990, 62). In some places, no land purchases took place whatsoever such as in the village of Finima. These results are significant since the area around Bonny experienced a steady growth in population and was heavily affected by oil company operations, so one could expect a dynamic market for land property to have developed. More importantly, the results are significant since collective land rights have survived not only in remote villages but also in towns such as in Bonny

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<sup>44</sup> For instance, Oshio (1990, 91) has argued that '*the institution of family property with its incidents under customary law largely survive the Land Use Act, 1978*' despite several court judgements to the contrary. On the impact of the Act on customary systems of tenure, see e.g. Omotola (1980, chapter 2). According to Omotola (1982, 40), '*the land struggle continues as if the Act had not come into effect*'.

<sup>45</sup> Bell-Gam was not interested in ownership rights as such, but the findings on ownership were incidental to the survey. The survey investigated the nature of land use with regards to land obtained for house construction, not on land in general. Nonetheless, since Bonny Island is largely made up of non-farming communities and is not industrialised, land is mainly required for house construction. Bell-Gam's evidence on house construction can hence provide a fair indication of the form of ownership rights. In the course of the survey, Bell-Gam asked the question 'how was land obtained for this house?'. The respondents' replies included land allocation by the chief, inheritance and purchase. It is assumed here that land allocated by the chief indicates communal ownership. Inherited land may be both family and individual owned, so it is a worse indicator of ownership structures.

Town where land for house construction could be expected to be more scarce than in villages.<sup>46</sup>

In any case, the survey of Bonny Island shows that individuals as well as families continue to acquire land through allocation by the chief, inheritance or purchase, not through a grant by the state governor. By implication, the land owner can still expect to enjoy his or her land rights until the government or an oil company becomes interested in a particular piece of land. In that case, land can be compulsorily acquired while the owners receive no compensation for the land.

The Land Use Act remains the most significant piece of legislation on land issues in Nigeria to-date. The provisions of the Land Use Act are valid from 1978 onwards and do not apply to events before 1978. In spite of this, oil company lawyers have unsuccessfully attempted to use the Act in order to discharge of their obligations to

<sup>46</sup> Table: Results of a survey in Bonny on the question 'how was land obtained for this house?'

Place (estimated population)	Bonny (18,075)	Opobo (23,580)	Okrika (26,425)	Finima (2,760)	Queenstown (2,379)	Oloma/Ayaminima (946)
1. Virgin land allocated by local chief	77.88%	28.90%	37.75%	54.72%	51.52%	56.41%
2. Site of former house inherited by present owner	5.76%	50.78%	34.69%	45.28%	36.36%	43.59%
3. Site of former house obtained by arrangement with former owners	3.84%	12.50%	3.06%	-	6.06%	-
4. Virgin land purchased by present owner	11.54%	0.78%	7.14%	-	3.03%	-
5. Site of former house purchased by present owner	-	1.56%	1.02%	-	3.03%	-
6. Any other (specify)	-	-	-	-	-	-
7. Don't know	1.04%	6.25%	2.04%	-	-	-
8. No response	-	-	14.28%	-	-	-

Source: Bell-Gam (1990, 96, 146, 171, 183, 189, 199 and 205).

village communities for operations before 1978. In the case *Adomba v. Odiest*<sup>47</sup>, two families were involved in a dispute over who should receive a compensation payment from Agip. Agip had entered communal land near Oloibiri in Rivers State in 1977, a year before the Land Use Act was promulgated. In court, Agip as the second defendant claimed that '*the plaintiffs had no right to institute the claim because of the Land Use Decree*' as they allegedly failed to fulfil certain requirements of the Act. The judge rightly considered Agip's statement as irrelevant. Even though the court judgement was made in 1980, Agip had to pay compensation for the land because the company entered the land before 1978. The Adomba case suggests that the year 1978 was a clear-cut dividing line in terms of compensation for oil company land acquisition in Nigeria. From 1978, village communities enjoyed fewer land rights in relation to oil companies.

To sum up, the Land Use Act allowed oil companies to gain access to the oil resources and to the land through the government more easily. Companies were no longer obliged to negotiate over the sale or allocation of land with the customary land owners, albeit they were still required to pay compensation for destroyed crops and other improvements on land. As a consequence, companies had a lesser economic incentive to investigate the local patterns of land ownership, which can partly explain the carelessness with which oil companies deal with village communities (this will be explained in some detail in section five of the thesis). At the same time, the Land Use Act failed to safeguard the rights of customary land owners, despite recommendations made to the government

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<sup>47</sup> 1 R.S.L.R. (1980).

by the Land Use Panel in 1977.<sup>48</sup> In this sense, the Nigerian land legislation after 1978 was biased in favour of oil companies at the expense of village communities.

### 3.6. Petroleum Legislation and Operating Arrangements

Once oil companies acquired land in village communities, they still required the backing of a business conducive legal framework to expand their operations. In order to fully understand the nature of legal disputes between oil companies and village communities, it is instructive to broadly outline the general legislative framework for the functioning of the oil industry in Nigeria.

The main oil related statute in Nigeria is the Petroleum Act 1969. The promulgation of the Act repealed the colonial Mineral Oils Ordinance, the main piece of petroleum legislation until 1969. While the Act was a creation of the post-colonial state, it largely confirmed provisions of the colonial oil legislation. The mechanism for the granting of oil licences under the Petroleum Act was much the same as under the colonial rule (see section two of the thesis). As Atsegbua (1993, 35) has observed, provisions related to the assignment and revocation of oil licences as well as the rights and powers of licence holders remained much the same as under colonial rule. The greatest changes concerned oil mining leases (OMLs). Until 1969, OMLs were granted for a period of 30 or 40 years. After 1969, OMLs were merely granted for 20 years. In addition, the oil

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<sup>48</sup> In preparation of the Land Use Act 1978, the Nigerian government convened the Land Use Panel between May and November 1977, under Justice Chukwunwelke Idigbe as chairman. Referring specifically to the oil industry, the Panel recommended that the *'Federal government should take a serious look at the effects of oil exploration and exploitation'* with the view to *'improving the quantum of compensation payable to land owners'* and to compelling oil companies into *'complete reclamation'* of all leased land (Land Use Panel 1977). But these recommendations have never been adhered to.



company was obliged to relinquish one-half of the area of the lease ten years after the grant of an OML. This new provision encouraged a faster rate of exploration because oil company managers were aware that they would have to relinquish part of the area and were likely to speed up exploration (Atsegbua 1993, 35-37).

While the nature of oil licences remained largely unchanged, the nature of the arrangements between oil companies and the government changed significantly. From 1971, the foreign oil companies were not merely granted oil licences by the government, but had to operate joint-ventures with the government (see section two of the thesis). Perhaps surprisingly, for many years to come, no formal operating agreements were signed between the joint-venture partners. Operating agreements spell out the legal relationship between the partners and also lay out the rules and procedures for the specific areas of responsibility as well as the meaning of joint property. In the joint-venture between Shell and the Nigerian government, which has been operating since April 1973, no formal operating agreement was signed until July 1991.<sup>49</sup> The agreement in 1991 was the first formal legal agreement to formalise the working relationship between Shell - the joint-venture operator - and the other joint-venture partners - NNPC, Elf and Agip (Atsegbua 1993, 43).

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<sup>49</sup> The participation arrangements with foreign oil companies were divided into two parts: the financial agreement and the operating agreement. The financial agreement with Shell-BP, for example, was signed in 1973. A draft operating agreement was drawn up in 1973 but it was not acceptable to the management of the NNOC. In their view, the agreement gave the NNOC little direct control over oil operations. While NNOC staff would be represented as directors in the joint-ventures, no powers were provided for day-to-day running of the oil operations. In addition, the government was to abide by the terms of the oil mining leases and concession agreements. The Ministry of Mines and Power refused to present an alternative draft, so the issue remained unresolved. The joint-ventures were forced to operate according to informal and formal procedures agreed with government officials. The draft agreements provided a basis for interim operational procedures (Turner 1977, 146-148).

More recently, production-sharing contracts, first introduced in an agreement with Ashland in 1973, were becoming more popular than joint-venture arrangements, particularly in offshore operations. The same company may indeed have different arrangements with the government. For instance, Shell operates a joint-venture on behalf of the government under the name Shell Petroleum Development Company (SPDC) of Nigeria. In addition, Shell Nigeria Exploration and Production Company (SNEPCO) has been operating since 1993 in deep-water acreage offshore and in so-called frontier areas onshore under a production-sharing arrangement with the government.<sup>50</sup> Both SPDC and SNEPCO are wholly-Shell owned, but they operate under different legal arrangements which, above all, affect the financing of oil activities.

In a production-sharing contract such as Shell's SNEPCO offshore venture, the contractor advances all funds towards running costs. In a joint-venture such as SPDC, the operator and the other joint-venture partners share the operating costs. Since Shell owns a 30% share in the SPDC venture, the company pays 30% of the running costs. A similar Operating Agreement with Topcon Company (Texaco Overseas) of 1988 read:

*All costs and expenses incurred by the Operator shall be borne by the Parties in proportion to their respective Participating Interest.*

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<sup>50</sup> As another wholly-owned Shell subsidiary, Shell Nigeria Gas (SNG) was launched in 1998 to market natural gas (*Vanguard*, 20 July 1998). SNG is not directly involved in oil exploration and production.

*Operator shall initially advance and pay all expenditures of whatever nature and kind incurred in Joint Operations. Operator may at its election, require each Non-Operator to advance its share of Joint Operation net cash requirements ('Cash Call'). Operator shall have a first and prior lien on all rights and interests of each Party in the Leases, Joint Property, and in production to secure payment (Barrows Company 1995, 772-779).*

Thus, on the most basic level, in a production-sharing contract, the government does not have to invest anything, while in a joint-venture, it must advance substantial funds at regular intervals. While the old joint-venture arrangements continue to exist, new arrangements in the 1990s have tended to be production-sharing contracts. In the 1990s, many of the large foreign oil companies in Nigeria have signed a production-sharing contract, including Shell, Mobil, Elf, Exxon and BP-Statoil Alliance (Khan 1994, 74). Both under joint-venture and production-sharing contracts, the foreign oil company has retained effective operating control over day-to-day operations in village communities. The company rather than the government has continued to be legally liable for any breach of law or for any damage arising from oil operations in village communities. From the perspective of village communities, the post-colonial petroleum statutes hence change little.

With regard to the day-to-day operations of oil companies, the Petroleum Act 1969 and other pieces of legislation (see below) contain various legal provisions designed to discourage village communities from hindering oil activities. The Oil Pipelines Act

imposed a penalty of fifty Naira or imprisonment for three months for obstructing any activities related to the possession of any oil pipelines or any ancillary installations of oil pipelines.<sup>51</sup> The Petroleum Act<sup>52</sup> extended these sanctions to other types of oil operations by providing that:

*Any person who interferes with or obstructs the holder of a licence or lease granted under section 2 of this Decree (or his servants or agents) in the exercise of any rights, power or liberty conferred by the licence or lease shall be guilty of an offence and on conviction shall be liable to a fine not exceeding £100 or to imprisonment for a period not exceeding six months, or both.*

Punishment for interference and sabotage became stiffer over the following two decades. The Petroleum Production and Distribution Anti-Sabotage Decree No.35 of 1975 created the offences of sabotage in respect of wilful acts calculated to prevent, disrupt or interfere with the production or distribution of petroleum products. Under the Decree, offenders are to be tried by military tribunals and, if found guilty, are liable to death sentence or to imprisonment for up to twenty-one years. As if death penalty were not enough, the Special Tribunal (Miscellaneous Offences) Decree No.20 of 1984 prescribed that those who unlawfully and wilfully break, damage, disconnect or otherwise tamper with any pipe for the transportation of crude oil or refined oil or gas shall be tried by the Miscellaneous Offences Tribunal. Those found guilty are liable to death by firing squad (Olisa 1987, 155-156). The death sentence was changed to a term of life

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<sup>51</sup> Section 25.

<sup>52</sup> Section 12(1).

imprisonment by the Special Tribunal (Miscellaneous Offences) Amendment Decree 1986 (Adewale 1989).

The common feature of all the above anti-sabotage statutes was trial by military tribunals. As Nwabueze (1992, chapter 3) has shown, the legal rights of those tried by military tribunals are severely constrained. By implication, the anti-sabotage statutes were designed to offer security protection to oil companies without offering adequate legal safeguards to those suspected of tampering with oil installations. This would suggest that anti-sabotage statutes were biased in favour of oil interests. This does not imply, however, that petroleum legislation as a whole or the administration of justice was biased against village communities in the oil producing areas. Above all, anti-sabotage legislation was rarely applied in practice.<sup>53</sup> Furthermore, a number of petroleum statutes, which specifically deal with oil company field operations, contain legal provisions for protection and compensation of those adversely affected by oil activity externalities (provisions on compensation will be discussed in sub-section 3.9. below). More importantly, a number of environmental statutes contain provisions which are capable of limiting the adverse effects of oil operations on village communities and offering legal recourse to those affected. An analysis of those statutes is instructive in discussing the question of whether the legal system is biased in favour of oil interests.

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<sup>53</sup> In one case, five men were accused of attempting to break a pipeline of the NNPC in Ogun state and were tried by a military tribunal in accordance with the provisions of the Special Tribunal (Miscellaneous Offences) Decree 1984 (*ThisDay*, 23 January 1997). Cases such as this are rather infrequent, however. It appears that oil companies have exaggerated the extent of sabotage in order to avoid compensation payments to communities, although one cannot deny the existence of sabotage (this will be shown in section six of the thesis).

### 3.7. Oil-Related Environmental Legislation

While Nigerian petroleum statutes may or may not be biased in favour of oil companies, environmental law is likely to be capable of acting as a constraint on oil operations in village communities. The most important piece of environmental legislation in Nigeria is the Federal Environmental Protection Agency (FEPA) Act 1988, as amended by Act No.59 of 1992. The Act created the FEPA as a public body with the responsibility to protect, develop and manage the Nigerian environment. It was also meant to advise the government on national environmental policies and priorities and on activities affecting the environment.<sup>54</sup> Until 1988, Nigeria had no national institution and no comprehensive detailed legislation to deal with environmental issues.

In addition to the general provisions of 1988 and 1992, the FEPA established detailed guidelines and standards for environmental control (FEPA 1991). The Agency co-operates with other governmental bodies. It is headed by a governing council with members drawn from various federal ministries. In addition, since 1992, the Agency has had a technical committee, also mostly drawn from Federal Ministries, to advise the governing council on technical issues.<sup>55</sup> In addition to the creation of FEPA, the Act of 1988 encouraged the federal states and the local government councils to set up their own Environmental Protection Bodies to deal with environmental issues in their respective areas.<sup>56</sup> Since 1988, various federal states have created State Environmental Protection Agencies (SEPA's).

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<sup>54</sup> Section 4.

<sup>55</sup> Section 2.

<sup>56</sup> Section 24.

The creation of the FEPA illustrates the growing interest in environmental issues in Nigeria which started in the 1970s. In 1979, the Nigerian National Petroleum Corporation (NNPC) held the first conference on environmental issues in the oil industry. The 1979 Conference called for the enactment of an environmental law similar to the Environmental Protection Agency (EPA) in the US. Since 1979, the NNPC has organised an environmental conference twice a year. Calls for environmental legislation have become louder (Odogwu 1991). The final creation of the Agency in 1988 was in direct response to the so-called Koko incident when toxic waste from Europe had been brought to Nigeria, which was followed by an outcry in the Nigerian press (Ilegbune 1994, 93). In other words, FEPA's creation was directly sparked off by public pressure at the micro-level.

The FEPA was given broad legal powers to enforce environmental controls in the oil industry and, thus, to intervene in the running of the industry. The FEPA Act and guidelines regulate areas such as water quality, effluent limitation and air quality. Section 20 of the Act prohibits the discharge *„of any hazardous substances into the air or upon the land and the waters of Nigeria”*. Pollution of Nigeria's natural environment is also made a crime and monetary penalties are imposed for polluters. Under section 20, a company may be fined up to 500,000 Naira for non-compliance with the Act and an additional 1,000 for every day that the offence continues. Section 21 of the Act makes specific reference to spiller's liability. If the text of section 21 were followed, in the case of an oil spill, the company would be liable for a penalty, the cost of removal including



any governmental expenditures and the cost of third parties in the form of reparation, restoration, restitution or compensation.

However, the limitations on FEPA's de facto environmental control in the oil industry are substantial. The FEPA Act provided for representatives of the Ministry of Petroleum Resources to sit on both the governing council and the technical committee. Petroleum officials could thus potentially influence FEPA's policy initiatives in favour of oil companies. Most importantly, the oil industry was explicitly mentioned in the FEPA Act. Section 23 of the Act reads:

*The Agency shall co-operate with the Ministry of Petroleum Resources (Petroleum Resources Department) for the removal of oil related pollutants discharged into the Nigerian environment and play such supportive role as the Ministry of Petroleum Resources (Petroleum Resources Department) may from time to time request from the Agency.*

Section 23 is sufficiently vague to leave doubt about the relationship between FEPA and the Ministry of Petroleum Resources. The words 'co-operate' and 'request' indicate that FEPA may be restrained from acting on matters relating to oil pollution without the consent of the oil ministry. As Adewale (1992, 64) has argued, section 23 makes the Department of Petroleum Resources independent of FEPA, a status which can be attributed to the strategic importance of oil to Nigeria. In theory, the administrative competencies of the Ministry of Petroleum Resources and FEPA largely overlap in the area of environmental protection (see Table 3.1.). It appears that section 23 of the FEPA Act may have taken the oil industry out of the purview of the Agency. It is still unclear to

what extent the abolition of the oil ministry in 1998 has influenced the relationship between petroleum officials and the FEPA.

**Table 3.1. Administrative Competencies in Environmental Matters in the Oil Industry**

Ministry of Petroleum Resources	Federal Environmental Protection Agency (FEPA)
<ul style="list-style-type: none"> <li>• Environmental permitting authority for oil operations</li> <li>• Licensing authority with regard to oil operations</li> <li>• Review and approval of Environmental Impacts Assessments (EIAs) for oil operations</li> </ul>	<ul style="list-style-type: none"> <li>• Environmental permitting authority for all industries in Nigeria, including the oil industry</li> <li>• Regulation of industrial effluent discharges</li> <li>• Review and approval of Environmental Impacts Assessments (EIAs) submitted in support of the authorisation process</li> </ul>

Source: Petroconsultants (1997, 12).

Several sections of the FEPA Act create loop holes which enable the offending oil company to escape legal responsibility for pollution. Among other exemptions, the Act permits the discharge of hazardous substances into the environment where such discharge is authorised by a law in force in Nigeria.<sup>57</sup> An example is the Oil in Navigable Waters Act which permits the discharge of hazardous substances or petroleum in certain circumstances.<sup>58</sup> For instance, a vessel may discharge oil into Nigerian waters if the escape of oil was due to leakage and the leakage was not due to any want of reasonable care and all reasonable steps were taken to stop or reduce the discharge. Therefore, as Adewale (1992, 58) has argued, section 4 of the Oil in Navigable Waters Act destroys the stringent deterrent which might have been provided by the FEPA Act. Considering the above discussion, the text of the FEPA Act bears many limitations.

<sup>57</sup> Section 20.

<sup>58</sup> Oil in Navigable Waters Act, section 4.

Perhaps more importantly, the enforcement of the FEPA Act has, until recently, been largely ineffective.<sup>59</sup> Scientific regulations established by FEPA in 1991, by and large, failed to restrict the adverse impact of oil operations on the ground. For instance, the '*emission limit for particulates from stationary sources*' was 50-250 mg/m<sup>3</sup> for oil burning (FEPA 1991). Shell's own figure for emissions from gas flaring in Rivers and Delta states of Nigeria was 240 mg/m<sup>3</sup> (World Bank 1995, volume II, annex I). A more comprehensive analysis of FEPA standards was carried out by Environmental Rights Action (ERA). Samples taken in Shell's production area in Akwa Ibom State were compared with FEPA standards. Most of the actual values measured by ERA were lower than FEPA standards, except for temperature and sulphur. Yet, at the same time, oil operations had an adverse environmental impact on the area (ERA 1995, 19). It therefore appears that FEPA's environmental standards may have been tailored in such a way that the oil industry can comply with them without taking any additional measures. This fact is not surprising since most of FEPA's oil industry standards were directly taken from the Department of Petroleum Resources (DPR), which is primarily concerned with oil production. This once again underlines the significance of section 23 of the FEPA Act. Even if the DPR strived to minimise the environmental impact of oil activities, it lacked the monitoring and basic office equipment to do so. Referring to environmental control, the World Bank concluded that the DPR is '*currently not able to perform its duties and is limited to obtaining oil company spill reports*' (World Bank 1995, volume II, annex J).

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<sup>59</sup> As yet Adewale and other Nigerian scholars have largely failed to analyse the enforcement of the FEPA guidelines and standards. For instance, a study by Guobadia (1993, 413-414) was limited to a recitation of sections of the legal text that deal with enforcement but failed to discuss actual enforcement.

Like the DPR, FEPA lacks basic equipment and skills to enforce environmental controls. According to the World Bank, the FEPA office in Rivers State had 25 staff in 1995, including 10 environmental professionals of which only 3 dealt with oil pollution, and only few activities were being implemented. The World Bank concluded that FEPA's funding and environmental expertise had to be substantially increased in order to be able to have a significant impact on environmental control. FEPA's main deficiencies in Rivers State were limited funding, weak monitoring and enforcement capacity, and few appropriately trained staff. In 1995, while at least represented in Rivers State, FEPA had not even been active in Delta State, the other major oil-producing area in Nigeria (World Bank 1995, volume II, annex J). The operations of the FEPA also appeared to be hindered by corruption. In October 1996, the chief executive of the FEPA, Dr. Evans Aina was arrested for fraud involving 1,115 million Naira (*Guardian*, Lagos, 27 January 1997). Yet, even if the FEPA were effective and an oil company had to pay a fine, the FEPA Act stipulates a fine not exceeding 500,000 Naira and an additional fine of 1,000 Naira for every day the offence subsists. Based on the 1995 average official exchange rate, this has amounted to a little less than US\$ 23,000 per incident, which appears to be a rather insignificant amount for any foreign oil company.

The State Environmental Protection Agencies (SEPAs), created by different states from 1988 onwards, also appear to lack effectiveness. The World Bank investigated the ineffectiveness of the SEPA in Rivers State. In 1995, the SEPA had only one vehicle and not a single boat, although much of the oil production takes place in riverine areas which requires movement by boat. Lacking a laboratory, the Agency was unable to monitor

water or air quality standards. The Agency commissioned a study on the environmental effects of gas flaring, but ran out of funds to complete it. Much of the SEPA's work on the oil industry was limited to visiting sites of oil spills and certifying that clean ups were completed. The World Bank concluded that the Agency's ability to assess and manage oil pollution was very limited (World Bank 1995, volume II, annex J). This evidence indicates severe limitations in the FEPA Act, the key environmental piece of legislation in Nigeria.

The lack of enforcement of the FEPA Act illustrates the inadequacy of environmental controls in Nigeria in general. The Associated Gas Re-injection Act 1979 and the Associated Gas Re-injection (Amendment) Act 1985 are the most significant environmental laws dealing specifically with the oil industry, promulgated in order to reduce gas flaring.<sup>60</sup> The 1979 Act required oil companies to re-inject the gas into the earth's crust or, alternatively, to provide detailed programmes for the utilisation of non-associated gas. The Act also set out the objective of prohibiting gas flaring by January 1984. The 1985 Act amended some of the provisions of the earlier Act and added new ones including a penalty for gas flaring. These gas related laws have no direct impact on litigation brought by village communities but they can illustrate the problems of enforcing environmental legislation in Nigeria.

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<sup>60</sup> As Turner (1977, 174) has pointed out, the Petroleum Act 1969 already provided for gas utilisation. The Petroleum (Drilling and Production) Regulations stated: *'Not later than five years after the commencement of production from the relevant area the licensee or leasee shall submit to the Commissioner any feasibility study, programme or proposal that he may have for the utilisation of any natural gas, whether associated with oil or not, which has been discovered in the relevant area'* (quoted in Turner 1977, 174). The Petroleum (Amendment) Decree No.16 of 1973 was further passed to *'enable the Federal Military Government to take natural gas produced along with crude oil (and presently flared) on terms agreed upon between the Government and the producer'* (quoted in Turner 1977, 176).

Despite the imposition of fines for non-compliance, the gas legislation was hardly implemented in practice as the government failed to initiate appropriate policy for gas utilisation.<sup>61</sup> Non-enforcement was to some extent due to the fact that the Nigerian National Petroleum Corporation (NNPC) was not willing to contribute towards the costs of gas development. For instance, Shell's Associated Gas Gathering Project was cancelled in 1994 because of financial problems. The project was aimed at reducing gas flaring in Shell's Eastern Division by 25% by selling the excess gas to industrial plants nearby (van Dessel 1995, 23). Furthermore, gas projects such as the Nigerian Liquefied Natural Gas (NLNG) project were delayed as a result of political decisions (Frynas 1998).

Gas related legislation has had little effect on the day-to-day operations of oil companies for two main reasons. First, the government could grant exemptions to companies for non-compliance with legislation. Most oil wells were exempted from compliance with the gas related statutes.<sup>62</sup> As many as 55 out of Shell's 84 oil wells in 1985 were exempted from the provisions of the gas legislation and over half of the other wells (see Appendix C, Table C.15.).

Second, the fines for gas flaring were insignificant. It was often cheaper for oil companies to continue gas flaring than to invest in gas projects. In 1985, the fine was set

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<sup>61</sup> As early as 1969, the 'Report of the Fact-Finding Mission' of the Nigerian government alluded to the problems of gas related legislation in the following words: '*...the nation's interests are not identical with [those of] the companies. This is clearly demonstrated in Nigeria by the fact that the companies have as yet not considered it necessary to take any action to commercialise the gas which is necessarily produced with the oil and which right now is flared. [Elsewhere] at least equal importance is given to the question of commercialisation and conservation of gas as is given to oil. While a nation can legislate about these [matters] or regulate them, it is only the positive initiative which it gives which actually means anything or gives rise to concrete results*' (quoted in Turner 1977, 172).

<sup>62</sup> Exemptions were made on the basis of technical and economic factors rather than environmental ones, for instance, in cases where re-injection would not increase production.



at 2 Kobo per one thousand cubic feet (28.317 standard cubic metres) of flared gas to be paid according to the same procedure as for royalty payments, that is, in foreign currency into a designated foreign account (Olisa 1987, 51). For instance, Mobil paid 142,172,123 Naira in gas flaring fines in 1994, which is insignificant if compared with 3,035,262,789 Naira paid in petroleum royalty in the same year. The payments of other companies were similarly insignificant (see Appendix C, Table C.16.). At the end of the 1980s, Chevron (formerly Gulf) noted that switching from water injection to gas injection would cost the company US\$ 56 million (quoted in Akpan 1997, 267). In effect, the compliance with the Gas Re-injection Decree would cost the company US\$ 56 million, compared with a mere US\$ 1 million which the company had to pay in gas flaring fines. It was therefore cheaper for the company to continue gas flaring.

The percentage of flared associated gas fell from around 95% in the 1970s to 74% in 1985, but the oil companies have so far failed to comply with the gas legislation of 1979 and 1985 (Akpan 1997). The World Bank (1995, volume II, annex J) argued that the gas flaring fines „*proved to be too small an incentive to induce companies to reduce flaring*”. The Bank further commented on the impact of gas related legislation:

*Although gas utilisation will increase, in the near term it will be based on economical non-associated gas supplies and not reduce gas flaring. The largest outlet for Nigeria's gas, the Bonny LNG plant, will liquefy primarily non-associated gas.* (World Bank 1995, volume II, annex J).

Recently, the gas flaring fines have been substantially increased. In 1996, the fine was increased from 2 Kobo to 50 Kobo per thousand standard cubic feet (Daily Times,



20 July 1996) and was further increased to 10 Naira in 1998 (Oil & Gas Update, January 1998). The increase in 1996 did little more than to offset inflation.<sup>63</sup> The increase in 1998 was substantial. In the meantime, the financial incentives for gas projects were substantially enhanced in the late 1990s (see section two of the thesis). As a result, gas production was becoming more important. Indeed, Shell aims to eliminate gas flaring by the year 2008, while Mobil aims to achieve the same seven years earlier (*Weekly Petroleum Argus*, 19 May 1997). In the long-term, gas flaring is hence likely to end within the next one or two decades. But it would appear that this is not the result of gas related legislation but the result of improved fiscal incentives to oil companies. In the short-term, there is little commercial incentive for oil companies to stop gas flaring and to comply with the gas related legislation.

Like the FEPA Act and the gas related legislation, the other environmental legislation in Nigeria also failed to significantly curb the adverse environmental impact of oil operations. A confidential study commissioned for the Shell-initiated Niger Delta Environmental Survey (NDES) of 1996 concluded: *„From our investigation all the legislation in the Niger Delta as regards environmental pollution control are more in the interest of industry than the community”* (Ogbnigwe 1996, 16). The study provided a brief summary of the different areas of legislation, which clearly indicated that environmental legislation was generally unenforced, favoured the government and the companies or entailed implementation problems (see Table 3.2.). The NDES-commissioned report, although too generalised and imprecise, has argued that current

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<sup>63</sup> In the decade 1985-1994, Nigerian consumer prices rose by over 1,100%, that means, 50 Kobo in 1994 were worth an equivalent of just over 4 Kobo in 1985.

legislation has so far failed to protect village communities from the adverse impact of oil company operations.

**Table 3.2. Legislation to Protect Communities, compiled for the NDES-commissioned report, 1996**

Legislation Area	Laws/Regulations	Degrees of Community Protection
Noise	<ul style="list-style-type: none"> <li>- Worksmen Compensation Acts 1990</li> <li>- State Environmental Sanitation Edicts</li> <li>- Factories Act</li> <li>- FEPA and SEPA Decrees &amp; Edict</li> </ul>	Not in force at all and inadequate laws
Wildlife Conservation	<ul style="list-style-type: none"> <li>- Endangered Species Act Cap 108 LFN* 1990</li> <li>- Natural Resources Conservation Council Act Cap 286 LFN 1990</li> <li>- Forestry Law</li> </ul>	Not properly enforced and inadequate laws
Pest Control	<ul style="list-style-type: none"> <li>- Public Health Laws</li> <li>- FEPA Act Cap 131 LFN 1990</li> </ul>	Laws are antiquated in terms of penalties, implementation and application and have been dropped (omitted) in the present laws of the federation
Fishery	<ul style="list-style-type: none"> <li>- See Fisheries Act Cap 404 LFN 1990</li> </ul>	Lack of enforcement and poor co-ordination and inadequate laws
Water	<ul style="list-style-type: none"> <li>- Mineral Oil (Safety) Act Cap 350 LFN 1990</li> <li>- Mineral Resources Act Cap 226 LFN 1990</li> <li>- Oil in Navigable Waters Act Cap 339 LFN 1990</li> <li>- Petroleum Act Cap 350 LFN 1990</li> <li>- River Basins Development Authorities (RBDA) Act Cap 396 LFN 1990</li> <li>- FEPA Act Cap 131 LFN 1990</li> </ul>	<ul style="list-style-type: none"> <li>- Inadequate, antiquated and finally omitted in the Federal Laws but still effective in the Delta States</li> <li>- Colonial and not in use</li> </ul>
Land	<ul style="list-style-type: none"> <li>- Land Use Act Cap 202 LFN 1990</li> <li>- Handful Wastes Act Cap 16 SLFN 1990</li> <li>- Natural Resources Conservation Council Act Cap 131 LFN 1990</li> <li>- FEPA Act Cap 131 LFN 1990</li> </ul>	<ul style="list-style-type: none"> <li>- Not adequately in force and do not favour the communities</li> <li>- Favour and protect interest of government and not communities</li> <li>- All these laws favour and protect government not the communities</li> </ul>
Industry	<ul style="list-style-type: none"> <li>- FEPA Act Cap 131 LFN 1990</li> <li>- FEPA Act Cap 131 LFN 1990</li> <li>- Harmful Wastes Act Cap 165 LFN 1990</li> <li>- Environmental Impact Assessment (EIA) Decree 1992, No.86</li> <li>- SEPA Edicts</li> </ul>	<ul style="list-style-type: none"> <li>- Not properly enforced</li> <li>- Not properly enforced</li> <li>- FEPA not equipped to enforce the regulation</li> <li>- Provisions to witch hunt communities and rob them of right to compensation i.e. sabotage</li> </ul>
Oil and Hazardous Substance	<ul style="list-style-type: none"> <li>- Petroleum Act Cap 350 LFN 1990</li> <li>- Petroleum (Drilling and Production) Regulations of 1969</li> <li>- Associated Gas Re-Injection Act Cap 20 LFN 1990</li> </ul>	<ul style="list-style-type: none"> <li>- Did not adopt environmental consideration and so cannot protect communities interest</li> <li>- Not effective</li> </ul>
Sanitation	<ul style="list-style-type: none"> <li>- Public Health Law</li> <li>- Environmental Sanitation Edicts</li> <li>- FEPA Act Cap 131 LFN 1990</li> </ul>	<ul style="list-style-type: none"> <li>- Antiquated</li> <li>- Not properly in force</li> <li>- Not properly in force; waste dispersal and not waste disposal</li> </ul>
Air	<ul style="list-style-type: none"> <li>- FEPA Decree No.56 of 1988</li> </ul>	

\* LFN stands for the Laws of the Federation of Nigeria

Source: Ogbnigwe (1996, 16-17).

According to the World Bank, there are three major constraints to the regulation of the energy and minerals sector in Nigeria. The first constraint is the absence of requirements for community participation in planning and development of oil activities. The second is corruption and inadequate compensation for damage to property. The third is lack of enforcement of environmental regulations. In addition, unlike other oil producing countries, Nigeria does not have a separate statute for the conservation of oil (World Bank, volume II, annex J).

Some of these problems can be illustrated with the help of factual evidence from the case *Douglas v. Shell*<sup>64</sup>, in which Oronto Douglas - an environmental rights activist - sued Shell, the NNPC, the Nigerian Liquefied Natural Gas (NLNG) project, Mobil and the Attorney-General for non-compliance with the Environmental Impact Assessment (EIA) Decree No.86 of 1992. The EIA Decree required companies and public bodies to undertake a so-called environmental impact assessment (EIA) survey prior to embarking on any project or activity where *'the extent, nature or location of a proposed project or activity is such that is likely to significantly affect the environment'*.<sup>65</sup> Douglas' lawyers contended that the EIA was not strictly applied in the execution of the NLNG project and Mobil's Natural Gas Liquids (NGL) recovery project, having violated section 7 of the Decree which intended to give opportunity to members of the public and interested groups to make comments on a specific EIA survey. Douglas maintained that no adequate opportunity was provided for public comments on the surveys. The Douglas case was dismissed in the first instance and was still pending on appeal in 1998.

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<sup>64</sup> Unreported Suit No. FHC/L/CS/573/96 in the Federal High Court, Lagos.

<sup>65</sup> Section 2(2).

The Douglas case revealed the questionable role of the FEPA, which was legally bound to certify EIA surveys. It appears that the FEPA did not take notice of the public criticism of the EIA surveys for the gas projects. After the commencement of the Douglas case on 26 June 1996, the FEPA then turned around and placed a Public Notice in the Daily Times (1 July 1996), a Nigerian daily newspaper, requesting information and comments on the EIA survey on Mobil's NGL project, which it had failed to do until then. One could conclude that the publication of the advertisement was in direct response to the lawsuit. Furthermore, the court case revealed that construction work on Mobil's gas project was already allowed to start before the EIA survey was submitted to the FEPA. The evidence on the EIA Decree reflected two of the problems raised by the World Bank study mentioned earlier in relation to environmental protection: lack of community participation in planning and development as well as lack of legal enforcement.

On the whole, it appears that the implementation of Nigeria's environmental legislation offered little protection to village communities, especially since the government was not particularly interested in enforcing environmental legislation. The companies meanwhile had little financial incentive to comply with environmental laws. In this context, government policy and corporate interests resulted in inadequate enforcement of statute law. Environmental legislation or rather its loopholes and lack of enforcement hence prejudiced the administration of justice in favour of oil company interests at the expense of village communities.

### 3.8. Nigerian Court System

In addition to statute law, conflicts between village communities and oil companies are also constrained by the structural character of the legal system. The court system in Nigeria has two layers: the federal courts and the state courts. According to Nwankwo *et al.* (1993, 8-14), the number of courts in Nigeria was well over 3600 at the beginning of the 1990s, excluding the various divisions of the same court.<sup>66</sup> The number of courts has increased since then, to a great extent as a result of the creation of new federal states. The courts established for the Federation are the Supreme Court, the Court of Appeal, the Federal High Court, and the courts of the capital territory of Abuja. The Supreme Court, established under the 1954 Constitution, is the highest court in Nigeria, headed by the Chief Justice of the Federation and consisting of up to 15 justices at a time. It exercises exclusive appellate jurisdiction over the decisions of the Court of Appeal and various disputes concerning presidential elections and between states and the federal government. The Court of Appeal, first established in 1976, can entertain appeals from state courts<sup>67</sup> and has exclusive appellate jurisdiction over various issues. It had 7 divisions in 1993. The Federal High Court, first established in 1973 as the Federal Revenue Court, has exclusive jurisdiction over certain matters but no appellate jurisdiction. It had 12 divisions in 1993 (Nwankwo *et al.* 1993, 8-14).<sup>68</sup>

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<sup>66</sup> The numbers of various types of courts quoted here are derived from Nwankwo *et al.* (1993, 8-14).

<sup>67</sup> Appeals can be entertained from the State High Courts, the Sharia and Customary Courts of Appeal and the Code of Conduct Bureau. Until 1976, there was no intervening appellate court between the State High Courts and the Supreme Court.

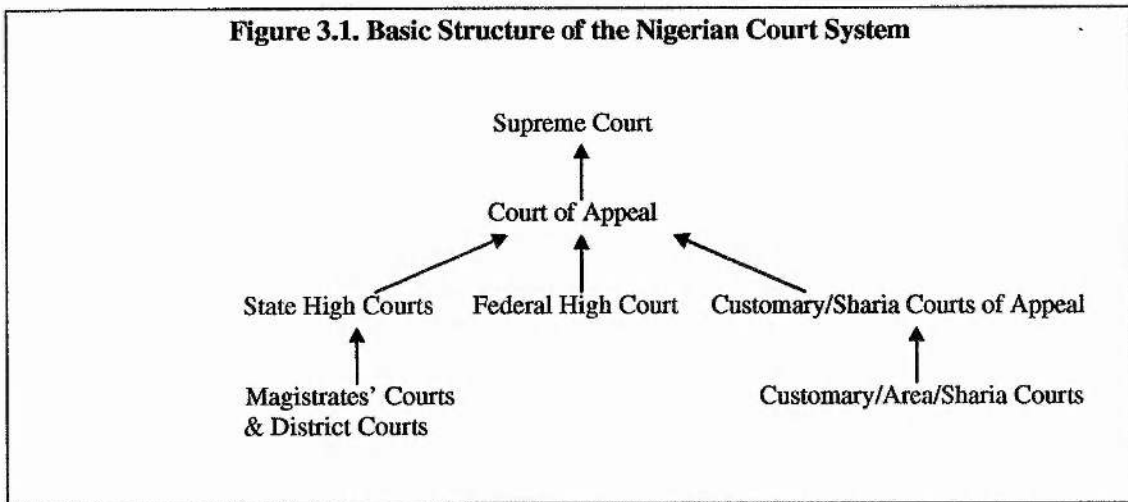
<sup>68</sup> As Oyakhirrome (1995) has pointed out, the Federal Revenue Court was originally constituted as a specialised court for cases dealing with federal revenue matters such as the taxation of companies, banking and fiscal policies of the government. The court was re-named the Federal High Court under the provisions of the 1979 Constitution but its original purpose as a specialised court of revenue matters largely persisted until 1993. The Constitution (Suspension and Modification) Decree No.107 of 1993 extended the original jurisdiction of the court to a wide range of matters including oil related litigation, drugs and aviation.

The courts established for the states of the Federation include the State High Courts, Magistrates or District Courts, Area or Customary and Sharia (Islamic) Courts, Customary Courts of Appeal, and Sharia Courts of Appeal.<sup>69</sup> District, Area and Sharia Courts mostly exist in Northern Nigeria. Customary courts exist mainly in Southern Nigeria. A state high court exists in each state with jurisdiction that covers the whole state. A high court has its divisions in different towns across each state in order to facilitate the court's workings. Customary and Sharia Courts of Appeal only exist in some states. At the beginning of the 1990s, only 19 out of 30 states had a Customary Court of Appeal. A Customary Court of Appeal has the jurisdiction to entertain appeals on matters concerning customary law. A Sharia Court of Appeal has the jurisdiction to entertain appeals on matters concerning Islamic law. Magistrates' courts exist everywhere in Nigeria. In many northern states, the magistrates courts only entertain civil cases, while district courts entertain criminal cases. In 1993, the number of magistrates'/district courts was estimated at 674. Area or customary courts are at the bottom of the court system. Area courts mostly deal with the Islamic law and their number was estimated at 978 in 1993. Customary courts mostly deal with customary law and their number was estimated at 1,924 in 1993 (Nwankwo *et al.* 1993, 8-14).

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<sup>69</sup> Other courts may include Rent Tribunals or Sanitation Courts.

**Figure 3.1. Basic Structure of the Nigerian Court System**



In terms of oil related litigation, the State High Courts were the courts of first instance until 1993. That means, a potential litigant was able to file a suit against an oil company in any of the divisions of a State High Court. In the then main oil producing state of Rivers State, for instance, there were eight High Court divisions in 1992, so a litigant could approach the nearest of the eight divisions to sue a company (Fawehinmi 1992, 664).<sup>70</sup> This situation was radically changed in 1993 when the government introduced the Constitution (Suspension and Modification) Decree No.107 of 1993, which extended the original jurisdiction of the Federal High Court to oil related matters. The Decree vested the Federal High Courts with the exclusive right to decide on matters related to oil mining, seismic studies and related matters.<sup>71</sup> Pending oil related cases are

<sup>70</sup> The Rivers State High Court divisions were Port Harcourt, Ahoada, Omoku, Yenagoa, Degema, Nchia, Isiokpo and Bori.

<sup>71</sup> The original jurisdiction of the Federal High Court to oil related matters was pronounced in the Federal High Court (Amendment) Decree No. 60 of 1991. But the 1991 Decree was suspended by Decree No. 16 of 1992. The Constitution (Suspension and Modification) Decree No.107 of 1993 re-enacted the provision that any lawsuits involving mining operations must be directed to the Federal High Court.



still tried in the State High Courts and other relevant courts. All new oil related lawsuits, which started after 1993, must be brought to the Federal High Court, although the Court of Appeal disagreed with such an interpretation of the 1993 Decree. In *Shell v. Isaiah*<sup>72</sup>, the Court of Appeal pronounced that the 1993 Decree does not affect oil spillage matters.<sup>73</sup> Notwithstanding the impact of the Isaiah case, from the perspective of litigants in oil related cases, an important feature of the structural character of the legal system has changed as a result of the 1993 Decree.

### 3.9. Nigerian Legislation and Compensation for Damages

While the venues for legal conflicts between oil companies and village communities have changed in recent years, statute law on compensation has also undergone some changes since Nigeria's independence in 1960.

A variety of Nigerian laws, including petroleum legislation, describe the numerous circumstances under which compensation may be paid to those adversely affected by oil operations. The right for compensation was first entrenched in the Oil Pipelines Act 1956

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<sup>72</sup> [1997] 6 NWLR.

<sup>73</sup> Katsina-Alu, J.C.A. pronounced that the Decree No.107 of 1993 'does not affect the jurisdiction of the State High Court to adjudicate this matter. The Decree is inapplicable because the subject matter of the claim in this case did not arise from „mines and minerals, oil fields, geological surveys or natural gas". The subject matter arose from oil spillage from the defendant's oil pipelines onto the plaintiffs' swampland and farmlands' (per Katsina-Alu, J.C.A. at page 247). This view appears as a very narrow judicial interpretation of the Decree as it could be expected that the original legislators have probably intended to include the issue of 'oil spills' within the ambit of 'mines and minerals' or 'oil fields'. In addition to the Decree No.107 of 1993, the federal government pronounced the Admiralty Jurisdiction Decree No.59 of 1991, which placed all court cases arising from oil pollution in the exclusive jurisdiction of the Federal High Court. It appears that the scope of the Decree was merely confined to maritime areas, however. Katsina-Alu, J.C.A. pronounced: 'The phrase „any claim for liability incurred for oil pollution damage" contained in section 1(1)(e) of the [Admiralty Jurisdiction] Decree cannot be read in isolation but within the context of Admiralty jurisdiction meaning any claim for liability incurred or oil pollution damage by ships, oil tankers and related property. I am in agreement with the learned counsel for the plaintiffs that the decree cannot apply to claims for oil spillage from pipelines onto swampland and farmlands like in the instant case' (per Katsina-Alu, J.C.A. at page 246).

which obliged a holder of a pipeline licence to pay compensation to any person who suffers damages caused by oil operations.<sup>74</sup> The Oil Pipelines Act stated:

*(...) the court shall award such compensation as it considers just in respect of any damage done to any buildings, lion crops or profitable trees by the holder of the permit in the exercise of his rights thereunder and in addition may award such sum in respect of disturbance (if any) as it may consider just.*<sup>75</sup>

The 1956 Act dealt specifically with pipelines and related damages, particularly oil spills. It was not until the promulgation of the 1969 Petroleum Act that more comprehensive provisions were made in respect of 'fair and adequate compensation' for damages from oil operations. In particular, the Petroleum Act 1969 provided:

*The holder of an oil exploration licence, oil prospecting licence or oil mining lease shall, in addition to any liability for compensation to which he may be subject under any other provision of the Decree, be liable to pay fair and adequate compensation for the disturbance of surface or other rights to any person who owns or is in lawful occupation of the licensed or leased lands.*<sup>76</sup>

The Petroleum Act and the related Petroleum (Drilling and Production) Regulations of 1969 list the items for assessment of compensation, including economic trees, structures affixed to the land, fishing rights, shrines and venerable objects. In

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<sup>74</sup> Sections 19-23.

<sup>75</sup> Section 20(1).

<sup>76</sup> Paragraph 36 of schedule 1.

addition, victims of oil operations were entitled to compensation for so-called disturbance and injurious affection. Disturbance meant the depreciation in land value or an interest in land due to damages, which could include any consequences of eviction from the land, legal costs of purchases of comparable property, increased rental or other expenses and loss of profits. Injurious affection referred to some anticipated depreciation in the value of the land (Omotola 1990).

The right for adequate compensation for compulsory acquisition of property (not for environmental damage) was further entrenched by the Nigerian Constitution of 1979.<sup>77</sup> Section 40 provided that any compulsory acquisition of property

*'requires the prompt payment of compensation thereof; and gives the person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria'.*<sup>78</sup>

In essence, the text of the Constitution did not simply insist upon the payment of compensation but stipulated that compensation paid must be adequate. The payment of adequate compensation for damages became a constitutional right, which was important since the Constitution ranks above the provisions of the Petroleum Act.

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<sup>77</sup> The 1979 Constitution included a number of provisions, which appear to be aimed at environmental protection. For instance, section 17(2)(d) required the state to prevent the *'exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community'*. Nonetheless, as Ajai (1996, 242) has pointed out, the 1979 Constitution did not recognise environmental rights as such. The Constitution did not, moreover, contain a provision which explicitly guarantees the right to compensation for environmental damage.

<sup>78</sup> Section 40(1).

While the Constitution secured the right to adequate compensation for compulsory acquisition of property, the African Charter on Human and People's Rights, which was ratified and made enforceable in Nigeria in 1983, secured the right to adequate compensation for environmental damage.<sup>79</sup> In the case *Fawehinmi v. Abacha*<sup>80</sup>, the Charter was placed above every other Nigerian legislation, which rendered it even superior to constitutional decrees. Article 24 of the Charter provided for the right to '*a general satisfactory environment favourable to their development*'. Article 21 provided for the right to '*freely dispose of their wealth and natural resources*'. In addition, it provided that '*in case of spoliation the disposed people shall have the right to the lawful recovery of its property as well as to an adequate compensation*'.

While 'adequate compensation' for damage has become an entrenched right, Nigeria has no comprehensive legislation dealing with the issue of compensation and some types of damage such as psychological damage are not explicitly provided for by legislation. Most importantly, the quantum of damages has not been explicitly defined. The term 'adequate compensation' can be subjective and vague, thus compensation appears to be a matter for the claimants to negotiate or for the judge to resolve. Since no comprehensive legislation relating to compensation for damages exists, the open market value of the subject matter for assessment has been considered the '*yardstick for compensation*' (Omotola 1990, 289).

Subject matters of assessment which have an open market value include the land, buildings, installations and crops. In addition, there are official government guidelines for

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<sup>79</sup> African Charter on Human and People's Rights (Ratification and Enforcement) Act 1983.

<sup>80</sup> [1996] 9 NWLR.

compensation payments for crops, trees and land (see Table 3.3.). But official rates for crops and trees tend to be considerably lower than the actual market value. For instance, in 1995, the value of a mango tree was estimated at 200-300 Naira for the fruit, while the official compensation rate was a mere 25 Naira. Since the rates are so insignificant, oil companies are even prepared to pay higher rates of compensation than prescribed by the government. A sub-committee of the Oil Producers Trade Section (OPTS) of the Lagos Chambers of Commerce, an association of oil producing companies, periodically releases a comprehensive list of compensation rates.<sup>81</sup> These rates are merely recommended to oil companies and are not binding, but companies reportedly use them.<sup>82</sup> A simple comparison of the official rates and the OPTS rates reveals how insignificant the official rates are. In 1997, for instance, the OPTS rate for rice was 15,860 Naira per hectare, while the 1995 official rate was a mere 1,375 Naira; even if adjusted for inflation in 1996 and in 1997, the rate would amount to only 1,924 Naira, which would be less than 13% of the OPTS rate (see Table 3.3.).

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<sup>81</sup> To the author's knowledge, the last update of the OPTS rates was undertaken in April 1997 and was effective from September 1997.

<sup>82</sup> Personal interview with J.U.Jakpa of the Lands Unit, Public Affairs Department, Chevron (Lagos, March 1998).

**Table 3.3. Comparison of official and OPTS rates of compensation for damage from oil operations**

Type of crop/ tree	1995 official rate of compensation per hectare/ tree (in Naira)	1995 official rate adjusted for inflation, 1996-97 (in Naira)*	1997 OPTS rate of compensation per hectare/ tree (in Naira)	1995 official rate of compensation per hectare/ tree (in US\$)**	1997 OPTS rate of compensation per hectare/ tree (in US\$)***
Rice	1375	1924	15860	62.80	724.66
Beans	290	406	10660	13.25	487.07
Yams	835	1168	48000	38.14	2193.18
Cocoyams	625	874	16000	28.55	731.06
Most vegetables	625	874	5850-16000	28.55	267.29-731.06
Mango tree	25	35	500	1.14	22.85
Banana tree	2.50	3.50	160	0.11	7.31
Plantain tree	2.50	3.50	160	0.11	7.31
Agbono tree	18.75	26.23	340	0.86	15.54
Timber hardwoods	50	69.95	600	2.28	27.42

\* Inflation was 29.3% in 1996 and 8.2% in 1997; \*\* at 1995 average exchange rate; \*\*\* at 1997 exchange rate  
 Sources: World Bank (1995, volume II, annex M, 76), Compensation Rates Recommended by OPTS Sub-Committee on Land Acquisition (April 1997 Edition).

The compensation rates paid by oil companies, however, cannot be considered adequate from either a social or a legal point of view. In 1995, the World Bank calculated compensation rates for forest land. Based on an annual rent of 5000 Naira, the Bank concluded that the price should be at least 50,000 Naira per hectare. In reality, oil companies in Delta State actually paid only 1000 Naira per hectare (World Bank 1995, volume II, annex M, 75). The rates paid by oil companies are thus considerably lower than those recommended by the World Bank. A further problem with the rates paid by oil companies is that they are not based on lost profits or some anticipated depreciation in the value of the land. The OPTS rates are called 'farm gate rates', which means they merely comprise of the market value of buying a crop or a tree plus the transport and other incidental costs of carrying those to the village. It has been argued that the current

method of compensation payments for crops and trees, currently used by oil companies, does not lead to the adequate compensation prescribed by law (Uduehi 1987, 104). As shown earlier, the Petroleum Act includes provisions for payments for disturbance and injurious affection, but these are not being observed by either the oil companies or the government.

In order to understand the issues better, consider the example of a coconut with the OPTS rate of 600 Naira. A mature coconut tree can possibly yield 30-80 coconuts, worth 50 Naira each. If we assume 50 coconuts per harvest on average, we arrive at a figure of 2,500 Naira as gross income for a single harvest. Less expenditure (costs of labour, maintenance etc.), the net income may be half, say, 1,250 Naira.<sup>83</sup> That means, the net income from one harvest of one coconut tree would already be considerably higher than the 600 Naira supposedly paid by an oil company. In order to properly calculate the loss of profits, the average net income from one harvest would need to be capitalised over a given estimated life span of the tree. The life span of a coconut tree could be 25 years or more. Assuming a period of only 10 years, one would arrive at a figure of 12,500 Naira. According to this conservative estimate, a coconut tree would be worth 12,500 Naira to a Nigerian farmer, which is roughly 20 times more than the current OPTS rate of 600 Naira. All of these calculations are, of course, hypothetical and do not take into account the so-called discount rate, which is common in calculating capital value. They can, nevertheless, tentatively indicate the gap between the rates paid by companies and the considerably higher economic value of trees and crops to the farmer.

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<sup>83</sup> These insights are owed to a personal interview with Nick Ashton-Jones, Environmental Rights Action (London, February 1998). See also Uduehi (1987) for alternative methods of assessment of compensation. The approximate market prices used in the example were for early 1998.



Similar calculations can be made for other economic trees, crops or fishing rights. Considering the above discussion, it appears that the current method of compensation payments is inherently flawed and fails to reflect both the social reality and the letter of the Petroleum Act. In addition to the above problems, there are no compensation rates for subject matters which have no open market value such as loss of expectation of life, deteriorating health or psychological damage. In essence, there is no adequate statutory provision for the quantum of compensation in Nigeria.

In general, some gaps in legislation are not necessarily a crucial problem because legislative provision cannot be entirely definite as technology changes, inflation rises and human needs change. Legislation needs to be flexible to a certain extent, therefore. However, the lack of legislative provision and inadequate government policy in Nigeria has had highly adverse effects on village communities. Compensation amounts arrived at during negotiations with village communities are still being paid according to the OPTS and government rates, which have been shown to be inadequate.

Existing gaps in legislative guidelines require judicial discretion, although Nigerian legislation provides for various circumstances under which compensation for damage from oil operations can be awarded. Since the phrase 'adequate compensation' can have different meanings, it is essential to analyse the way in which court judgements have evolved on the issue (this will be shown in greater detail in section six of the thesis).

### 3.10. Conclusion

The formal-institutional structure of the Nigerian legal system is highly sophisticated, based on an elaborate fusion of English Common Law and typically Nigerian features, particularly customary law. Nigerian statute law, especially the FEPA Act, offer some scope for the protection and compensation of those adversely affected by oil operations but it contains major loopholes. It is not yet clear in what way oil related regulations will be altered under the current Abubakar regime or following the announced transition to civilian rule. Since the death of general Abacha in 1998, the Department of Petroleum Resources - the government's monitoring agency for the oil industry - was abolished and there have been tentative indications that oil related legislation may be altered.<sup>84</sup> Until now, the guidelines for the operation of the oil industry and their actual enforcement have offered little protection for village communities.

In contrast to the enforcement problems of environmental laws, Nigerian land law appears to be *per se* biased against village communities and their customary rights. With the advent of the Land Use Act of 1978, land owners have been deprived of their land rights to the benefit of oil companies, which can compulsorily acquire any piece of land they desire with the permission of the state governor. In addition, land owners no longer receive any rents from oil companies for land acquisition, which underlines the fact that the government has favoured the interests of private companies in Nigeria before those of village communities.

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<sup>84</sup> In November 1998, for instance, a new regulation was announced which stipulated that the volume of oil in drilling mud waste must not exceed 1%, which meant a change from 10% to 1%. If this environmental regulation is enforced, the cost of drilling is likely to rise for the oil companies (*PostExpress*, 30 November 1998). It is yet unclear whether recent changes precipitate a fundamental shift in Nigeria's oil related legislation.

In general, our discussion of land legislation and environmental law has indicated that statute law is either inadequate or unenforced which renders it incapable of restricting the adverse impact of oil operations on the ground. While statutory law has offered little protection to village communities, it promised monetary compensation for those adversely affected by oil operations. However, statutory provisions for the payment of compensation contain gaps and the actual quantum of compensation prescribed by the state appears to be inadequate in relation to the damage caused by oil companies. Considering the inadequate nature of legislation and its enforcement, one can understand why village communities tend to be aggrieved by the inadequate compensation payments of oil companies. A farmer is likely not to understand legal or economic concepts such as capital value, but he or she is likely to notice that the farm income fell as a result of oil operations, while this loss was not matched by the oil company's compensation payment.

On the whole, this section of the thesis has indicated that Nigeria's legal system tends to be biased in favour of the state and the oil companies at the expense of village communities. In this context, an alliance of the political elite and private interests in Nigeria (see section two of the thesis) obstructs the development of legal remedies for environmental and land related problems. In other words, the rentier nature of the Nigerian state continues to prevent the formulation and enforcement of legislation which would benefit the interests of society as a whole, as opposed to the interests of the ruling elite and the oil companies. The inadequate legislative provision and legal enforcement may result in social unrest in the oil producing areas by groups dissatisfied with the prevailing economic, social and legal order. This social unrest may result in litigation

against oil companies. The litigants' only hope is that the judiciary is sufficiently independent of state structures as well as positively disposed towards them in order to give a wider scope to legal remedies, which calls for an analysis of the actual-practical operations of the legal system presented in the following section.

## **Section 4: Nigerian Legal System in Practice: Results of a Survey**

### **Survey Methodology**

#### **4.1. Introduction**

Another constraint on legal disputes between oil companies and village communities are the actual-practical operations of the legal system which are discussed in this core section of the thesis. We approach this topic through a survey of Nigerian legal practitioners. The survey serves as a window to an understanding of legal conflicts between oil companies and village communities in Nigeria, the main focus of the thesis. In this context, the thesis attempts to fill a gap in the existing literature on African legal systems in terms of their day-to-day operations.

This survey is aimed at evaluating the constraints and opportunities faced by potential and actual litigants in oil related litigation. Inevitably, the survey does not address all correlates of legal disputes such as socio-economic and political factors including the marginalisation of ethnic minorities in the oil producing areas (see section two of the thesis). Rather than developing a comprehensive model of litigation in Nigeria's society, the main goal of our survey is to illustrate the incentives and

disincentives of the legal process, which can either encourage or discourage litigants from engaging in litigation.

In this context, a survey can verify or falsify two hypotheses as to whether the legal system is biased against oil companies or village communities. One of these hypotheses is that the formal-legal system is biased against village communities. Previous discussion in this thesis has suggested that there are indications of a bias in Nigeria's statute law in favour of oil companies (see section three of the thesis). The fact that statute law may be predisposed in favour of oil companies, however, does not automatically imply that the legal system as a whole is biased. Our previous discussion did not raise the issues of bias within the cumulation of judicial precedents, the court process or the day-to-day behaviour of the judiciary. If the legal system as a whole were found to be prejudiced in favour of oil companies, it could be reasonably assumed that a number of potential litigants had been discouraged from instituting lawsuits against oil companies. This would mean that the current level of litigation against oil companies is merely a small fraction of the potential court cases, which could arise as a result of valid legal claims to compensation for damages from oil operations.

A further hypothesis would be that the legal system *per se* has no inherent biases but rather that the existing distribution of resources favours the claims of oil companies.

This section of the thesis examines those factors within Nigeria's legal practice which may have given rise to an advantageous position for oil companies vis-à-vis individual or community litigants. It should be noted at this stage that possible explanations are not necessarily mutually exclusive. The day-to-day operations of the

legal system may embody factors which operate against the interests of village communities to a varying degree, while some factors may work in favour of community litigants.

Of central importance to our discussion in this section is the question of access to courts. The extent of the barriers to justice can indicate the motivations of the potential plaintiffs who decide not to pursue a valid legal claim in court. Constraints to the institution of lawsuits also influence the perceived image of the formal legal system among potential litigants. These constraints could lead to a feeling among potential litigants that law is on the side of the opposing litigants. This feeling, combined with economic inequality and lack of political representation, could in turn increase the likelihood of extra legal forms of protest. An examination of the day-to-day operations of the legal system in relation to village community claims can hence serve as a window to an understanding of why communities abandon litigation in favour of extra legal forms of protest.

An analysis of the survey does not purport to explain the level of litigation and conflicts in the Nigerian oil industry. But we can identify factors which may encourage or discourage litigants from engaging in oil related litigation.

## **4.2. Methodology**

As previously stated, the purpose of this section of the thesis is to identify factors which can either encourage or discourage individual and community litigants from engaging in oil related litigation. We investigate this topic on the basis of a survey of 154



Nigerian legal practitioners. This approach has to be weighted against alternative methodologies. One of those methodologies would be to survey potential and actual litigants from village communities in the oil producing areas. Such a survey could investigate extra-legal forms of dispute resolution such as informal negotiations and settlements, which cannot be analysed through a survey of legal practitioners. A survey of village community members, moreover, would be likely to highlight barriers to justice as perceived by community members. It is likely that many potential litigants with a valid legal claim have never approached a lawyer in the first instance.

A survey of legal practitioners does not account for those potential litigants. Lawyers can only report on actual experiences with potential litigants whom they have met. But the vast majority of legal practitioners in our survey have had at least some experience with obstacles in terms of access to courts. This indicates a high level of awareness amongst the respondents with regard to the problems encountered by potential litigants.

More importantly, a survey of legal practitioners is likely to yield superior returns to a survey of potential litigants in village communities. While all legal practitioners speak English, a high proportion of the members of village communities do not speak English but a local language and/or pidgin English. Survey questions would need to be translated into a number of local languages. The members of village communities, moreover, may be illiterate which is likely to render the use of standardised multiple-choice questions very difficult. By implication, a survey of village communities would pose severe problems of consistency. A survey by Onyige (1979) in the oil producing areas exemplified some of

the language and communications problems. For instance, with the question on the impact of oil operations, respondents in Onyige's survey named oil pollution and oil spills as major problems of oil operations, without noticing that oil spills are part of oil pollution. Onyige's survey encountered a number of problems, which cannot be solely ascribed to the inadequacies of survey design. His study exemplified that a survey of village communities may produce misleading and statistically inconsistent results.

An important strength of a survey of legal practitioners as opposed to a survey of potential litigants is that lawyers can be attributed some ability to answer questions accurately; an ability which perhaps exceeds that of the average member of society. All Nigerian lawyers have a university degree and have been trained to use language in a precise way. This is likely to ensure an adequate standard of the respondents' replies.

The main strength of a survey of lawyers as opposed to a survey of potential litigants is that it can assist an analysis of broader questions regarding the legal system, as compared to the individualistic view of litigants. A survey of legal practitioners has thus allowed for an assessment of key characteristics of the legal system such as the quality of the judicial services provided by courts of different types.

For practical reasons, survey distribution in Nigeria can be a difficult undertaking. Given Nigeria's problems with communications services, it would have been very difficult, if not impossible, for a researcher to distribute questionnaires to a random population of lawyers in different locations. Problems included delayed distribution or loss of mail. The reliable alternative taken in our survey was to distribute questionnaires in person. Survey distribution in person does not always lead to a high response rate. In

Nigeria, even well-known and established organisations encounter problems in conducting standardised questionnaires distributed in person. For instance, the Constitutional Rights Project (CRP), a well-known Nigerian non-governmental organisation, conducted a survey among judges and legal practitioners in 1993. Despite repeated efforts by the CRP staff to retrieve the questionnaires in person from the judges and lawyers, the response rate was relatively low. Out of 1,000 questionnaires, only 511 were returned, which represented a response rate of 51.1% (Nwankwo *et al.* 1993, 6-7). We assumed that Nigerian legal practitioners would be even less likely to respond to a research student based at a British university, whom they had never met before and who has no affiliation to an established organisation in Nigeria. Therefore, our efforts concentrated on finding a way of ensuring an effective distribution and collection of questionnaires.

In this context, it was assumed that the distribution and collection of questionnaires would be helped by an affiliation with an established Nigerian organisation. The author sought the support of Abdul Oroh, executive director of the Civil Liberties Organisation (CLO), a Nigerian non-governmental organisation, and Chief Priscilla O. Kuye, former head of the Nigerian Bar Association. Both Mr. Oroh and Ms. Kuye offered to assist in the distribution of the survey by providing lists of names of law firms which were said to have had previous contacts with the oil industry. Additional names of law firms were provided by several legal practitioners known to the author. The main rationale behind the choice of respondents was to find lawyers who had professional experience in dealing with oil related cases. It was assumed that, unless the sample

included a significant number of experienced lawyers, the analysis of the respondents' views would provide little information on oil related litigation. We are confident that the names of law firms obtained for our survey probably reflect the best possible sample of lawyers, which an outsider would be likely to get in Nigeria. A limitation of the survey to those locations where personal contacts with legal practitioners could be established has yielded an adequate response rate.

Of the names obtained, the vast majority of law firms were located in Lagos, Port Harcourt and Warri. Lagos is Nigeria's commercial centre where the greatest number of lawyers reside and where the major oil companies tend to have their headquarters. A large proportion of lawyers dealing with the oil industry are employed in law firms in Lagos, several of which have a subsidiary in Port Harcourt or in Warri. Port Harcourt is the main centre of the Nigerian oil industry being located in Rivers State, the oldest oil producing area in Nigeria, which hosts, for instance, the operational headquarters of Shell's Eastern division. Warri is the second most important city in the oil producing areas, which hosts, for instance, the operational headquarters of Shell's Western division. Many law firms dealing with oil related litigation are based in Port Harcourt and Warri. Port Harcourt rather than Warri was chosen for the location of the survey because the number of law firms with oil industry work is greater in Port Harcourt than in Warri. Given the concentration of oil activities in the Port Harcourt area, the author felt justified in limiting the location of the survey to Lagos and Port Harcourt.

For practical and financial reasons, the author decided to limit his research trip to Lagos. A volunteer member of the CLO helped to distribute questionnaires in Port

Harcourt. In the course of several weeks in February and March 1998, 240 questionnaires were distributed among Nigerian lawyers in Lagos and Port Harcourt. In Lagos, 180 questionnaires were distributed in person to the law chambers and were also collected in person by the author or by the chief legal adviser of the CLO, Udeme Essien, with whom the author collaborated. Visits to the law firms took place between 9:00 A.M. and 7 P.M. At each address the author introduced himself as a research student and presented a letter from the Department of Economics, St Andrews, which indicated that the survey was supported by the Department, by the CLO and by the Nigerian Bar Association. The chief legal adviser of the CLO did not need an introductory letter because he could gain access to a law firm owing to his affiliation with the CLO. This approach proved effective in terms of securing an entry into the law firms.

At each address the author or Mr. Essien asked to speak to a senior partner in the law firm. If necessary, an appointment was made to call again later. If no contact was established after two visits, the address was given up. In each firm, between 1 and 5 questionnaires were left with the senior partner to distribute randomly among the lawyers. The number of questionnaires left in a law firm depended on the willingness of the partner to support the survey. It was felt that it would have been better to distribute only one questionnaire in each law firm to ensure greater representativeness. But we had feared that, unless several questionnaires were distributed in each firm willing to support the survey, the number of respondents could turn out to be too small to represent a significantly high sample of respondents. In order to ensure consistency in the lawyers' responses, all respondents were asked to provide their personal assessment of the legal

system, as opposed to the views held by their employers or colleagues. This was important in order to avoid the possibility of the lawyers reflecting the perceived views of their employers or colleagues on the legal system rather than their own views. All respondents were advised that their responses were anonymous and would be treated with confidentiality. It was hoped that this approach would encourage respondents to provide a more candid assessment of the legal system. In Port Harcourt, 60 questionnaires were distributed in person by a volunteer member of the CLO, in a similar manner to the one described above for Lagos.

This approach allowed for an effective distribution and collection of questionnaires. Out of 240 questionnaires, 154 were returned, representing a response rate of 64.2%. This was significantly higher than the response rate of 51.1% in the CRP survey mentioned earlier. By the end of the author's stay in Nigeria, only 19 questionnaires were retrieved from Port Harcourt, compared with 135 in Lagos, representing response rates of 31.7% and 75.0% respectively. The low response rate in Port Harcourt can be explained by the fact that a number of lawyers failed to return their questionnaires on the date of collection. The high response rate in Lagos can be explained by the fact that a significant number of lawyers were visited more than once to collect the questionnaires.

### **4.3. Survey Analysis**

Since we are mostly interested in describing the legal system in relation to the oil industry operations and oil related litigation, our survey analysis attempts to assess the

views of lawyers with experience in dealing with oil related cases. We attempted to strengthen this analysis through a series of oil related questions in the survey. As it turned out, a number of the law firms surveyed had no or virtually no dealings with oil related litigation. In a significant proportion of firms, oil related litigation constituted only a small fraction of the firm's total work. The survey, nevertheless, reflects a significant pool of expert knowledge on oil operations since as many as 128 respondents (83.1%) state that they have previously had some professional contact with the oil industry, of which 85 (55.2%) have previously acted as legal counsel for an oil company, its subsidiary or a sub-contractor and 97 (63.0%) have previously acted as counsel in a lawsuit against an oil company.

The analysis of the survey relies on frequency distributions, percentage tables and non-parametric tests.<sup>1</sup> Among other questions, we investigated whether specific sub-groups of respondents (e.g. lawyers specialised in environmental law or lawyers who previously worked for the oil industry) hold different views from those respondents who do not fit into the sub-group.<sup>2</sup> The views of lawyers who previously worked for the oil industry or those who had previous contacts with the oil industry are likely to reflect their professional experiences in dealing with oil related cases. A comparison of those lawyers with the other lawyers highlight the differences between oil related litigation and other types of litigation. In this context, the presence in our sample of a significant proportion

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<sup>1</sup> In the following analysis of the survey, all results are depicted in percentage terms. The figures may not always add up to 100.0% but range from 99.8% to 100.1% as the figures were rounded off.

<sup>2</sup> We approached this question by conducting non-parametric chi-square ( $\chi^2$ ) tests. A similar method was applied in a study by Adigun and Stephenson (1992), which utilised chi-square tests in an analysis of job satisfaction in the UK and Nigeria. In our analysis, the alpha value was set at 10% ( $\alpha=0.10$ ). If a specific cell was empty or had very low values, cells were collapsed into joint cells for the purpose of the cross-tabulation. Low values or empty cells could have artificially inflated the chi-square value and were therefore avoided in any cross-tabulations.



of lawyers with no previous oil industry contacts is useful as it provides a comparative reference.

When using the term 'oil related litigation', one needs to remember that there are different types of oil related cases. These include employment-related litigation, environmental cases and commercial disputes. We are, of course, mostly interested in court cases between village communities and oil companies. These cases involve mainly environmental claims. We have thus utilised the distinct category of environmental lawyers vis-à-vis the other lawyers in order to distinguish between views on oil related litigation involving village communities and other types of oil related claims.

As previously stated, the question of access to courts is of central importance to our survey analysis. The results indicate that access to courts is a major obstacle in the functioning of Nigeria's legal system. The two main problems of access to courts are identified as the potential plaintiffs' lack of financial resources and their lack of knowledge in terms of general education and legal rights. The survey suggests that oil related litigation is heavily impeded by these problems of access.

Once a litigant is able to overcome the access problems, his or her case may still be hampered by the inadequate functioning of the judiciary and the court system. An analysis of the constraints in the functioning of the judiciary and the court system forms the second main theme in our discussion. The results indicate that the Nigerian judiciary and the court system face severe problems in their day-to-day operations. These impediments include inadequate funding of the legal system by the government, the dependence of the judiciary on the executive arm of the government and the high

congestion in the courts. A number of the problems noted in the context of the functioning of the judiciary, notably high congestion in the courts, compound the obstacles of access to courts in Nigeria faced by litigants.

A discussion of the problems of access to courts and the functioning of the judiciary and the court system, which forms the initial part of the survey analysis, is followed by a discussion of secondary survey results concerning characteristics of the Nigerian legal system. These comprise three themes. First, we discuss the distinctions in the competency of judicial services in different courts in Nigeria. It emerges that there are marked differences. The Supreme Court and the Court of Appeal are widely regarded as the most competent Nigerian courts. Second, we explore in greater detail the lawyers' perceptions of the conduct of oil companies and courts in oil related litigation. Issues discussed include ethical conduct in court proceedings and the amount of compensation awards to litigants. The data indicates that lawyers do not perceive litigants in oil related cases being treated particularly unfairly by the courts. But there appear to exist numerous instances, in which oil companies do not conduct themselves ethically in court proceedings, and courts are regarded as biased in favour of oil companies. Third, legal change and legislation are discussed. It emerges that most lawyers perceive the legal changes that occurred in Nigeria as minor. Most lawyers also suggest that legislation is not properly enforced.

As a whole, the survey results suggest that the legal system is biased in favour of oil companies. This bias is not uniform. Some judges, for instance, may be more sympathetic towards opposing litigants rather than the oil companies. However, it could

be said that the legal process discourages litigation against oil companies. This would seem to support the earlier hypothesis that the existing court cases are only a small fraction of the potential litigation, which could arise as a result of valid legal claims to compensation for damages from oil operations.

#### **4.4. Profile of respondents**

Of the 154 respondents, 124 lawyers (80.5%) are male and 28 lawyers (18.2%) are female, while 2 lawyers give no response. This broadly reflects the dominance of men within Nigeria's legal profession. The average age of respondents is 40 years. Respondents are relatively young, 50% of them are under 36 years of age (see Appendix B, Table B.1.).<sup>3</sup> Lawyers have been, on average, members of the Nigerian Bar Association for 11 years.<sup>4</sup> A large proportion of respondents - 40.9% - have between 6 and 10 years of professional experience (see Appendix B, Table B.2). The relatively young age and the short experience of the respondents can be attributed to the recent expansion in legal education in Nigeria.<sup>5</sup>

The size of law firms, in which respondents have been employed, varies widely. The largest law firm has approximately 55 employees while the smallest has only 2 employees. The average firm size is approximately 12 employees (see Appendix B, Table

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<sup>3</sup> Birth year MEAN = 1957.97.

<sup>4</sup> Year of admission to the Bar MEAN = 1986.91.

<sup>5</sup> Enrolment in the Nigerian Law School, which has recently been relocated from Lagos to Abuja, has increased significantly in the last two decades. According to Oke (1994), the Law School had 225 students in 1973. The number of Law School students increased to 796 in 1983, to over 2,000 in 1988 and to 2,611 in 1992. The number of Law School graduates is a good indicator of the expansion of Nigeria's legal profession because all prospective lawyers must attend the school before they can be called to the Bar. As a result of the recent expansion in Nigeria's legal education, it is not surprising to encounter so many relatively young lawyers in the country.

B.3.).<sup>6</sup> The largest firm has approximately 40 support staff while the smallest has no support staff at all. The average number of support staff is roughly 5.5 (see Appendix B, Table B.4).<sup>7</sup> The majority of law firms - some 61% - has between 1 and 5 support staff. In general, one could say that the size of Nigerian law firms is relatively small. Respondents, many of whom had dealings with the oil industry, can be expected to work for more flourishing firms with a larger number of staff because legal advice for the oil industry can be very profitable. Therefore, the average size of the law firms in the sample is likely to be greater than the size of the Nigeria's law firms in general.

Of the 154 lawyers, 30 (19.5%) state that they specialise in criminal law, 93 (60.4%) in civil law, 47 (30.5%) in environmental law and 102 (66.2%) in commercial law. The large number of lawyers with specialisation in commercial law can be explained by the fact that many respondents work for the oil industry, which requires specialised knowledge of commercial law. A number of lawyers indicates that they specialise in all types of law since they are employed by a general law practice. In Nigeria, there is no professional distinction between barrister and solicitor so a general practitioner is theoretically expected to be familiar with all aspects of the legal practice. However, lawyers who declare to be specialists in all areas of law are considered 'unclassifiable' for the purpose of the survey precisely because they do not indicate a particular specialisation. The replies of lawyers who provide no information on their specialisation

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<sup>6</sup> Size of law firm MEAN = 12.09.

<sup>7</sup> Number of support staff MEAN = 5.49.

are classified as 'no response' (see Appendix B, Table B.5.). This system of classification can explain the relatively high percentage of 'unclassifiable' and 'no responses'.<sup>8</sup>

To sum up, respondents are predominantly male, under 40 years old and have 10 or less years of professional experience. They tend to work in small law firms, with 1 to 5 support staff, and they are predominantly specialised in civil law. The profile of respondents appears to reflect the fact that the Nigerian legal profession is relatively new in composition, dynamic and dominated by small, under-funded law chambers.

## **Main Survey Results: Access to Courts**

### **4.5. Problems of access to courts**

The degree of access to courts determines as to whether potential litigants can file a lawsuit or not, so it constitutes a key test of the quality of a legal system. Unfortunately, there has been relatively little academic research on the access to courts in Africa. Writing on Francophone Africa, Degni-Segui (1995) has identified five basic problems of access to courts in Africa: geographical distance to courts, delay in the disposal of cases, lack of funds, African political systems and ignorance of legal rights. In this sub-section, we analyse whether our survey results support or do not support Degui's study on access to courts.

Respondents have been asked whether they have encountered instances in which potential litigants have been discouraged from seeking legal recourse although they have

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<sup>8</sup> In the following analysis of the survey results, all unclassifiable responses are counted as 'no response'.

had a valid claim to compensation, an injunction or another form of legal recourse. Of all respondents, 59.1% state that they have some experiences with those potential litigants, even though only 24.7% declare that they have encountered those situations often or very often. Only 16.2% of the lawyers state that they have never encountered those situations (see Table 4.1.). Once we subtract 'no responses' and 'don't knows', as many as 78.5% state that they have had some experiences with potential litigants who were discouraged from seeking redress in court. Some 71.6% note that they have those experiences at least sometimes, if not often (see columns 3 and 4, Table 4.1.). These figures indicate that the problems of access to justice in Nigeria are very significant indeed.

**Table 4.1. Answers to question 11a 'Have you encountered instances in which potential litigants have been discouraged from legal action although they had a valid claim to compensation, an injunction or another form of legal recourse?'**

	1	2	3	4
	Percentage of respondents	Cumulative percentage	Percentage of respondents (excl. 'no responses' & 'don't knows')	Cumulative percentage (excl. 'no responses' & 'don't knows')
Very often	7.1	7.1	9.5	9.5
Often	17.5	24.6	23.3	32.8
Sometimes	29.2	53.8	38.8	71.6
Rarely	5.2	59.0	6.9	78.5
Never	16.2	75.2	21.6	100.1
Don't know	20.8	96.0	-	-
No response	3.9	99.9	-	-
Total	99.9	99.9	100.1	100.1

Lawyers have been asked to rank reasons which would prevent potential litigants from seeking legal recourse. The responses suggest that the main constraints of access to

courts are financial problems and ignorance of potential litigants. Out of 154 lawyers, the lack of funds is regarded as a very important reason by 75.3% of the lawyers and by 13.6% as an important reason. The second and third most important reasons are the lack of general education and ignorance of legal rights. These two problems are considered very important reasons by 57.1% and 51.3% respectively, and are considered important reasons by 24.7% and 37.7% respectively. These answers suggest that victims of crimes and civil wrongs in Nigeria are frequently ignorant about their legal rights. The other important problems of access to courts are: delay in the disposal of cases, intimidation by public bodies, intimidation by tort-feasors and uncertainty about the potential success of a suit. Other problems such as ethnic origin and the geographical distance to courts are considered less important (see Table 4.2.).

**Table 4.2. Answer to question 11b 'Amongst the following rank reasons which you think would prevent potential litigants from seeking legal recourse?' (per cent)**

	very important reason	important reason	less important reason	no response
Lack of funds	75.3	13.6	4.5	6.5
Lack of general education	57.1	24.7	9.1	9.1
Ignorance of legal rights	51.3	37.7	3.9	7.1
Delay in the disposal of cases by courts	48.7	39.0	7.1	5.2
Intimidation by public bodies	35.1	35.1	16.9	13.0
Intimidation by tort-feasors	24.0	43.5	19.5	13.0
Uncertainty about the potential success of a suit	21.4	55.2	13.6	9.7
Ethnic origin	15.6	27.3	42.2	14.9
Geographical distance to courts	10.4	33.8	40.9	14.9
Living in a rural area	10.4	33.1	42.9	13.6
Organisational structure of villages	5.8	20.1	57.1	16.9
Being a woman	4.5	20.8	59.7	14.9
Young age	3.2	20.8	59.1	16.9



A significant proportion of respondents maintain that the problems of access to courts are greater in litigation involving oil companies. Excluding 'no responses' and 'don't knows', some 48.9% state that the problems of access to courts are more severe in oil related litigation than in other types of litigation, while 40.3% state that the problems are equal (see columns 3 and 4, Table 4.3.). The high percentage of respondents who note that the problems are equal in oil related litigation and in other types of litigation suggests that a significant proportion of the potential litigants in oil related cases are not particularly disadvantaged if compared with other types of litigation. But the responses suggest that, by and large, the problems in oil related litigation are greater.

One commercial lawyer from Lagos states that the problems are more severe in oil related litigation because *'claims against oil companies often occur in rural areas in which educational levels are low, there is general ignorance and lack of funds'*.<sup>9</sup> It could be argued that the main reason why problems are greater in oil related litigation is the financial imbalance between the affluent oil companies on the one hand and the poor village communities on the other hand. Oil companies have clearly more financial resources than community litigants, which they can spend on the country's leading lawyers and expert witnesses. The village communities in oil producing areas belong to some of the poorest income groups in Nigeria. Bayelsa State, one of the main oil producing areas, is one of the poorest regions in Nigeria.

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<sup>9</sup> Lawyer no.83, 1998 survey of Nigerian lawyers.

**Table 4.3. Answers to question 11c 'Are the problems [of access to courts] particularly severe in oil related litigation?'**

	1	2	3	4
	Percentage of Respondents	Cumulative Percentage	Percentage of Respondents (excl. 'no responses' & 'don't knows')	Cumulative Percentage (excl. 'no responses' & 'don't knows')
Much more severe	11.7	11.7	14.0	14.0
More severe	29.2	40.9	34.9	48.9
The same	33.8	74.7	40.3	89.2
Less severe	6.5	81.2	7.8	97.0
Much less severe	2.6	83.8	3.1	100.1
Don't know	9.7	93.5	-	-
No response	6.5	100.0	-	-
Total	100.0	100.0	100.1	100.1

There appear to be two important reasons why the financial imbalance between oil companies and village communities has become less significant in recent years. First, those affected by oil operations usually sue oil companies as a group rather than as individual plaintiffs so they may share some of the financial costs between themselves. Village communities and families have had greater problems in litigating successfully in the past (this will be shown in greater detail in section six of the thesis). In the 1970s, it was not uncommon for a judge to dismiss a suit or to limit its scope because he or she found that the plaintiffs have not proven their authority to sue as a group.<sup>10</sup> Successful cases, in which oil companies have been sued by plaintiffs representing a village community or a family as a whole, have become more widespread.<sup>11</sup> Second, many

<sup>10</sup> For instance, in *Chinda v. Shell-BP* (1974) 2 R.S.L.R., the plaintiffs' claim was dismissed as the judge held that they 'have not proved their authority to sue in a representative capacity, and are therefore deemed to be suing only in respect of themselves individually'.

<sup>11</sup> Several recent high-profile cases by communities against oil companies from the 1990s can be cited: *Geosource v. Biragbara* [1997] 5 NWLR, *Shell v. Tiebo VII* [1996] 4 NWLR, *Shell v. Farah* [1995] 3 NWLR. In all of these cases, plaintiffs sued an oil company in representative capacity, not as individuals.

lawyers in the oil producing areas appear to increasingly view court cases against oil companies as a financial investment and no longer demand a standard fee from the litigants but instead demand a contingency fee, as pointed out by a number of respondents.<sup>12</sup> Lawyers increasingly work for free for their client during the legal proceedings but in turn demand a high share of the compensation payment in return, if the suit succeeds. In other words, the lawyer rather than the litigant increasingly carries the financial risk of losing a case. The attraction of lawyers to oil related litigation may be high because the financial rewards are potentially higher than in other types of litigation. In *Shell v. Farah*<sup>13</sup>, for example, in which the plaintiffs have been awarded 4,621,000 Naira by the court in 1994, the lawyers did not receive a standard fee but instead received roughly 2,500,000 Naira or 54% of the total compensation payment.<sup>14</sup> In comparison, according to Nwankwo *et al.* (1993, 28), the Chief Justice of Nigeria, the highest paid judicial officer in the country, received 77,400 Naira per annum in 1993 (excluding housing and other additional benefits). Since the potential earnings in oil related litigation are substantial, several lawyers in the oil producing areas such as Lucius Nwosu in Port Harcourt have specialised in litigation of village communities against oil companies.<sup>15</sup> In

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<sup>12</sup> Lawyers employed by oil companies usually receive a standard fee rather than a contingency fee, so they earn a fee independently of the success of a suit. For instance, Shell in Nigeria reportedly pays roughly US\$ 2,500 on average in lawyer's fees for a single case, including the standard fee, court fees, tax and other bills, no matter whether a suit succeeds or not. Personal interview with J.A. Odeleye, SPDC's Legal Manager and Company Secretary (Lagos, February 1998). A standard fee may be less profitable for a lawyer than a contingency fee but it carries little financial risk for the lawyer. A standard fee may still be very profitable for legal practitioners, in particular, those working for the oil industry. According to Ibidapo-Obe (1995, 186), some Nigerian lawyers charge a standard fee of between 250,000 and 1,000,000 Naira for a single brief. The vast majority of potential litigants in village communities would not be able to afford those sums. In contrast, a contingency fee may enable potential litigants to file a lawsuit.

<sup>13</sup> [1995] 3 NWLR.

<sup>14</sup> Personal interview with Ledum Mittee, one of the lawyers in the Farah case (London, February 1998).

<sup>15</sup> In the Farah case alone, Lucius Nwosu reportedly received roughly 2,000,000 Naira. Personal interview with Ledum Mittee, one of the lawyers in the Farah case (London, February 1998).

some cases, the lawyer may even be willing to pay for expert evidence if he or she can expect a high share of the potential compensation payment.<sup>16</sup> In effect, lawyers such as Nwosu help potential litigants to gain greater access to courts in oil related litigation. The two reasons discussed above - group based claims and the nature of lawyers' fees - may explain why the problems of access to courts in some oil related litigation have become less severe in recent years, which can help to explain the rise in litigation against oil companies.

While the financial burden of litigants in oil related cases appears to have decreased, the lack of funds remains the most important problem of access to courts in Nigeria, whether in oil related litigation or other types of litigation. The limited Nigerian legal aid scheme, introduced in 1976, initially only provided financial assistance in criminal proceedings (Collett 1980). In 1986, the Nigerian legal aid scheme was extended to cover civil claims in respect of accidents (Ibidapo-Obe 1995, 188). But the vast majority of oil related litigation does not qualify for any legal aid. Village communities have to hire a lawyer and expert witnesses themselves, which is expensive and burdensome. Several respondents emphasise that plaintiffs in oil related cases often lack funds to pay for expert evidence, which favours oil companies which can afford to hire some of the country's best scientific experts. According to a 1994 field survey of Okoosi and Oyelaran-Oyeyinka (1995), undertaken in 14 oil producing communities in Delta State, the average daily income ranged from 7 Naira (US\$ 0.30 at 1994 official rate) in Uzere to 50 Naira (US\$ 2.27) in Agbasho. In comparison, in the case *Shell v. Farah*<sup>17</sup>,

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<sup>16</sup> In the Farah case, for example, Lucius Nwosu reportedly covered the costs of the scientific report presented in court. Personal interview with Ledum Mittee, one of the lawyers in the Farah case (London, February 1998).

<sup>17</sup> [1995] 3 NWLR.

the two expert referees appointed by the court tendered a bill for 515,800 Naira, which included 415,800 Naira for their fees and 100,000 Naira for a soil test. Considering the relatively low incomes of the local people, potential litigants can rarely afford to engage lawyers and expert witnesses.<sup>18</sup> Hiring a lawyer on a contingency fee could solve the financial problems of potential litigants. But it could be expected that access to contingency fees may be limited due to the significant cost of expert witnesses and the financial risk faced by legal practitioners.

Even if a lawyer is prepared to forego his standard fee and is also prepared to pay himself for expert evidence, there may be other costs related to negotiations with oil companies and litigation, in particular costs of travel and court fees. Litigants may need to travel to visit their legal counsel, to negotiate with oil company staff and to attend court proceedings. The geographical distance is a problem, since those affected by oil operations live mostly in the Niger Delta where it may take many hours or even days to find a regular means of transport. Transportation in the Niger Delta is relatively expensive for the local population. The chief of Okoroba explained that a single trip to Shell's Western headquarters in Port Harcourt would cost him as much as the income from several months fishing.<sup>19</sup> According to the World Bank (1995, 79), a return trip between many riverine communities in the Niger Delta and Port Harcourt costs as much as the monthly salary of a government employee. Court fees may also be a burden. If a court

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<sup>18</sup> In general, a World Bank (1996, 25) report stated that 34.7 million Nigerians out of a population of some 102 million lived below the poverty line in 1992. According to the World Bank (1996, 38), the average per capita expenditure of rural households was 780 Naira per annum (at 1985 prices). In Southern Nigeria, the figure was 937 Naira per annum. Considering those low incomes, it is understandable that the lack of funds is the key problem for any potential litigants in Nigeria.

<sup>19</sup> Personal interview (Okoroba, February 1998).

case is lost, they may amount to a total of over 10,000 Naira.<sup>20</sup> If the case is lost on appeal, the general costs may be higher, especially if the litigants have to travel to the Supreme Court in Abuja, which is located in Northern Nigeria.

While the lack of funds is the main obstacle faced by potential litigants, the second and third most important problems of access to courts are related to ignorance. Communities in oil producing areas are often ignorant of their legal rights, as exemplified by the village Okoroba in Bayelsa State visited by the author. Prof. Bruce Powell, biologist at the University of Port Harcourt, estimated that the number of fish near Okoroba fell by approximately 80% as a result of canal dredging by a Shell subcontractor. The oil operations clearly damaged the local economy dependent on fishing.<sup>21</sup> However, the villagers were unaware that they could sue Shell for the loss of income from fishing, although they were aware that they could sue oil companies for destroyed crops and trees.<sup>22</sup> According to a number of lawyers, villagers are usually aware that they are entitled to compensation for damage from an oil spill while they tend to be ignorant that they are entitled to claim compensation for damages from other oil company activities. This may partly explain why a substantial quantity of court cases against oil companies are initiated in respect of oil spills.<sup>23</sup> Ignorance of formal legal rights can be partly explained by the existence of customary laws, which govern Nigeria's village

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<sup>20</sup> Personal interview with Mr. Vera-Cruz, partner at Victor & Charles (Lagos, February 1998).

<sup>21</sup> Personal interview with Prof. Bruce Powell, Port Harcourt (February 1997).

<sup>22</sup> Personal interviews with villagers at Okoroba, Bayelsa State, Nigeria (February 1997).

<sup>23</sup> Another reason for the substantial quantity of litigation involving damage from oil spills may be that the case law is relatively well settled and makes it relatively easy to claim damages (see section six of the thesis). In 1998, 70% of all Shell's pending court cases in Nigeria involved damage from oil spills. Personal interview with J.A. Odeleye, SPDC's Legal Manager and Company Secretary (Lagos, February 1998).



communities. Community members usually prefer to resolve disputes according to customary law, rather than through the country's legal system (see section three of the thesis). Potential litigants from village communities are likely to be highly familiar with their own customary law rights, but in oil related disputes they must seek redress in the formal legal system whose rules are usually alien to them. To sum up, the problems of access to courts appear to be greater in oil related litigation, which involves village communities.

#### **4.6. Views on Access to Courts According to Different Sub-Groups**

The views on access to courts vary across different groups of respondents. Of all chi-square tests of independence conducted on the issue of access to courts, the most significant deviations occur in respect of the lawyers' professional background. Environmental lawyers and commercial lawyers hold diverging views from the other lawyers in 6 and 5 out of 15 questions respectively. Views also vary according to years of professional experience (in 4 questions out of 15), according to size of law firm (in 4 questions), according to age (in 3 questions) and according to gender (in 3 questions).

It was expected that the views of lawyers who had previous contact with the oil industry would diverge from the other lawyers, although no firm predictions were made as to how they would diverge. Only one cross-tabulation produces a significant chi-square value, namely on the question how often lawyers have met potential litigants discouraged from legal action despite a valid legal claim.<sup>24</sup> Of the lawyers with previous

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<sup>24</sup>  $\chi^2 = 5.30$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.071$ .



oil industry contact, 10.9% pronounce that they have met potential litigants who have been discouraged from legal redress very often, compared with none of the other lawyers. Of the lawyers with previous oil industry contact, 73.3% state that they have met potential litigants who have been discouraged from legal redress at least sometimes if not often, compared with only 35.7% of the other lawyers (see Table 4.4.). These responses are more significant in terms of oil related litigation than the replies by all respondents because they are more likely to be based more on experiences with the oil industry. The results appear to strengthen the earlier finding that the problems of access to courts are more severe in oil related litigation.

**Table 4.4. Answers to questions 6a and 11a: Responses of lawyers with previous contact with the oil industry on whether they met potential litigants who have been discouraged from seeking legal recourse (per cent)**

	Very often	Often	Sometimes	Rarely	Never
Lawyers with previous contact in the oil industry	10.9	21.8	40.6	7.9	18.8
Cumulative percentage	10.9	32.7	73.3	81.2	100.0
Other lawyers	0	35.7	0	21.4	42.9
Cumulative percentage	0	35.7	35.7	57.1	100.0

As with lawyers who had previous contacts with the oil industry, it was also expected that the views of lawyers who previously worked for an oil company would diverge from the views of the other lawyers. It was expected that oil company lawyers would have had fewer experiences with problems of access to courts because their clients may be, on average, wealthier than those of the other lawyers. Another hypothesis concerning lawyers representing the oil industry was that they would consider the problems of access to courts in oil related litigation less severe than the other lawyers

since oil companies face fewer constraints of access to court than an average litigant. These hypotheses are largely rejected by the data as no dependence can be established between the attribute of company lawyer and questions on the access to courts. The only, but very significant, exception is the question on intimidation by tort-feasors.<sup>25</sup> Oil company lawyers attach less importance to intimidation by tort-feasors than the other lawyers, with 24.7% and 45.5% of oil company lawyers considering this problem as very important and important respectively, compared with 31.6% and 56.1% of the other lawyers respectively (see Table 4.5.). Clearly, significantly fewer oil company lawyers consider this a problem.

**Table 4.5. Answers to questions 6b and 11b: Responses of oil industry lawyers on intimidation by tort-feasors (per cent)**

	Very important reason	Important reason	Less important reason
Lawyers who acted for oil industry	24.7	45.5	29.9
Cumulative percentage	24.7	70.2	100.1
Other lawyers	31.6	56.1	12.3
Cumulative percentage	31.6	87.7	100.0

The responses of oil company lawyers do not necessarily suggest that intimidation by tort-feasors is a less severe problem in oil related litigation. On the contrary, several respondents emphasise that intimidation by public bodies and oil companies is a more prevalent problem in oil related litigation. Several lawyers have strong views on the question of intimidation. While commenting on oil related litigation, one respondent from Port Harcourt states that problems are *'more severe because in oil related matters the*

<sup>25</sup>  $\chi^2 = 5.84$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.054$ .

*interest groups involved are powerful and highly connected, oil being the major revenue earner of the central government*".<sup>26</sup> Another lawyer from Port Harcourt comments that in cases involving oil companies the government may *"use security agents against litigants and their solicitors"*.<sup>27</sup> An environmental lawyer from Lagos comments on the structural links between the government and oil companies: *'Most litigants are afraid of taking oil companies to court because of their connection with the government'*.<sup>28</sup> Judged by these responses, political influence of oil companies may, therefore, deter potential litigants, although in practice it may be difficult to document specific cases involving intimidation. It is entirely consistent for oil company lawyers to minimise the importance of intimidation. No explanation can be entirely satisfactory, but one may expect that oil companies as tort-feasors are less likely to be accused of intimidation by the lawyers working for them. While our speculations on the question of intimidation cannot be adequately verified or falsified by the data, it is conceivable that oil company lawyers would want to minimise attempts of intimidation by their clients or would simply note fewer problems.

It was expected that responses on access to courts would vary according to legal specialisation. In particular, it was assumed that lawyers who declare that they are specialised in environmental law would regard the problems of access to courts as greater, while lawyers who declare to be specialised in commercial law would regard them as less severe. It was expected that lawyers specialised in environmental law would

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<sup>26</sup> Lawyer no.144, 1998 survey of Nigerian lawyers.

<sup>27</sup> Lawyer no.146, 1998 survey of Nigerian lawyers.

<sup>28</sup> Lawyer no.8, 1998 survey of Nigerian lawyers.

have had more experiences with problems of access to courts because some of their clients may be victims of environmental damage beset by problems of lack of funds and ignorance. It was expected that commercial lawyers, whose clients tend to be commercial enterprises, would be less likely to meet clients who experienced problems of access to courts. These hypotheses are confirmed to a significant extent. In 5 out of 6 questions, in which the views of environmental lawyers differ from the other lawyers, environmental lawyers consider problems of access to courts more severe than others (see Table 4.6.).<sup>29</sup> Perhaps not surprisingly, they regard the lack of general education as the main problem. Of the environmental lawyers, 73.3% consider the lack of general education a very important obstacle. This is not necessarily surprising since an understanding of environmental damage can be expected to require more technical knowledge than other types of legal disputes. Interestingly, environmental lawyers consider intimidation by public bodies and tort-feasors a particularly important problem of access to courts. Of the environmental lawyers, 60.5% and 44.2% regard the intimidation by public bodies and tort-feasors as very important problems respectively, compared with 28.2% and 20.0% of the other lawyers respectively. These results suggest that the government and some

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<sup>29</sup> In cross-tabulations, in which the responses of environmental lawyers vary from the rest, the p value varies from  $p = 0.065$  to  $p = 0.0002$ , that means, all results are highly significant at  $\alpha = 0.10$ . The chi-square and p values for cross-tabulations between the attribute of environmental lawyer and attributes of obstacles of access to courts are as follows:

- for views on lack of general education:  $\chi^2 = 3.39$ , which exceeds the critical  $\chi^2_{0.10} = 2.706$  at d.f. = 1,  $p = 0.065$ ;
- for views on intimidation by public bodies:  $\chi^2 = 11.61$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.003$ ;
- for views on intimidation by tort-feasors:  $\chi^2 = 8.58$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.014$ ;
- for views on ethnic origin:  $\chi^2 = 16.86$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.0002$ ;
- for views on geographical distance to courts:  $\chi^2 = 12.10$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.002$ ;
- for views on uncertainty about the potential success of a suit:  $\chi^2 = 5.18$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.074$ .

private bodies may attempt to frustrate environmental litigation.<sup>30</sup> By implication, the views of the environmental lawyers appear to indicate that potential litigants seeking compensation for environmental damage in oil related litigation may be more likely to encounter problems of access to courts than litigants in other types of litigation. Furthermore, these views imply that lack of general education and intimidation are more important problems of access to courts in oil related cases involving environmental damage than in other types of cases. These are important facts since lawsuits between village communities and oil companies usually involve claims for environmental damage.

**Table 4.6. Answers to questions 5 and 11b: Responses of environmental lawyers on reasons which may prevent potential litigants from seeking legal recourse (per cent)**

	very important reason	important reason	less important reason
Environmental lawyers on lack of general education	73.3	24.4	2.2
Other lawyers	54.7	30.7	14.7
Environmental lawyers on intimidation by public bodies	60.5	25.6	14.0
Other lawyers	28.2	46.5	25.4
Environmental lawyers on intimidation by tort-feasors	44.2	41.9	14.0
Other lawyers	20.0	50.0	30.0
Environmental lawyers on ethnic origin	25.0	45.5	29.5
Other lawyers	11.8	19.1	69.1
Environmental lawyers on geographical distance to courts	16.3	58.1	25.6
Other lawyers	11.8	29.4	58.8
Environmental lawyers on uncertainty about the potential success of a suit	15.9	75.0	9.1
Other lawyers	24.0	54.7	21.3

The hypothesis that commercial lawyers would be less likely to meet clients who experienced problems of access to courts is only partially confirmed. Commercial lawyers

<sup>30</sup> These results also appear to strengthen the argument that the Nigerian government and private corporations sometimes frustrate the enforcement of environmental legislation (compare section three of the thesis).

state that they have met fewer potential litigants who have been discouraged from legal action although they had a valid legal claim, which supports our earlier hypothesis. Only 5.3% of commercial lawyers have met those potential litigants very often, compared with 20.8% of the other lawyers. Only 31.6% of commercial lawyers have met those potential litigants very often or often, compared with 50.0% of the other lawyers (see Table 4.7.). These results suggest that commercial lawyers, many of whom are likely to work for the oil industry, may be more isolated from the general problems of access to courts facing individual litigants than the other lawyers.

**Table 4.7. Answers to questions 5 and 11a: Responses of commercial lawyers on whether they met potential litigants who have been discouraged from seeking legal recourse (per cent)**

	Very often	Often	Sometimes/rarely/never
Commercial lawyers	5.3	26.3	68.4
Cumulative percentage	5.3	31.6	100.0
Other lawyers	20.8	29.2	50.0
Cumulative percentage	20.8	50.0	100.0

While commercial lawyers appear to meet fewer potential litigants who have been discouraged from seeking legal redress, they seem to be well aware of the problems of access to courts, which puts into question our earlier hypothesis on the views of commercial lawyers. In 3 out of 4 cross-tabulations, of which the results were not independent, commercial lawyers considered problems of access to courts as more severe than the other lawyers.<sup>31</sup> Above all, commercial lawyers appear to regard intimidation by

<sup>31</sup> In cross-tabulations, in which the responses of commercial lawyers vary from the rest, the p value varies from  $p = 0.093$  to  $p = 0.003$ , that means, all results are significant at  $\alpha = 0.10$ . The chi-square and p values for cross-tabulations between the attribute of commercial lawyer and attributes of obstacles of access to courts are as follows:

- for views on intimidation by public bodies:  $\chi^2 = 11.34$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.003$ ;

public bodies and by tort-feasors as more severe than the other lawyers. Of all commercial lawyers, 85.5% and 80.9% consider intimidation by public bodies and by tort-feasors respectively an important problem, while the figures for the other lawyers are 54.2% and 58.4% (see Table 4.8.). These results would suggest that intimidation can be a crucial problem of access to Nigerian courts within a commercial environment, which appears to strengthen our earlier speculations that intimidation can be a very important factor in preventing oil related litigation.

**Table 4.8. Answers to questions 5 and 11b: Responses of commercial lawyers on reasons which may prevent potential litigants from seeking legal recourse (per cent)**

	very important reason	important reason	less important reason
Commercial lawyers on intimidation by public bodies	44.4	41.1	14.4
Other lawyers	25.0	29.2	45.8
Commercial lawyers on intimidation by tort-feasors	29.2	51.7	19.1
Other lawyers	29.2	29.2	41.6
Commercial lawyers on ethnic origin	17.0	34.1	48.9
Other lawyers	16.7	12.5	70.8
Commercial lawyers on organisational structure of villages	8.0	21.6	70.5
Other lawyers	9.5	47.6	42.9

It was expected that lawyers who have practised for a long time would be more likely to regard problems of access to courts as more severe than lawyers who have practised for a shorter period of time since they would have more experience in dealing

- for views on intimidation by tort-feasors:  $\chi^2 = 6.07$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.048$ ;
- for views on ethnic origin:  $\chi^2 = 2.83$ , which exceeds the critical  $\chi^2_{0.10} = 2.706$  at d.f. = 1,  $p = 0.093$ ;
- for views on organisational structure of villages:  $\chi^2 = 4.54$ , which exceeds the critical  $\chi^2_{0.10} = 2.706$  at d.f. = 1,  $p = 0.033$ .

The results of the cross-tabulation between the attribute of commercial lawyers and problems of ethnic origin were only marginally significant at  $\alpha = 0.10$  as they become significant at  $p = 0.093$ . All other results were highly significant.



with potential litigants and would be able to better recognise more subtle distinctions between problems of access to courts. Similarly, it was assumed that older lawyers would consider problems of access to courts more severe than younger lawyers. These hypotheses are largely rejected by the data although the results are not entirely clear. Several cross-tabulations indicate relationships of dependence between the attributes of professional experience and age on the one hand and questions on the access to courts on the other. There are two interesting trends worth mentioning.

First, the views of lawyers with 21 or more years of professional experience differ from the views of the other lawyers on the role of ethnic origin, living in a rural area and gender. The most significant results concern ethnic origin as a reason which may prevent potential litigants from seeking legal redress.<sup>32</sup> Of the lawyers with 21 or more years of professional experience, 100.0% state that ethnic origin is a problem of access to courts, compared with figures of between 39.1% and 75.0% for the other lawyers (see Appendix B, Table B.6.).

Second, the views of older lawyers differ from the views of younger lawyers on the lack of general education, uncertainty about the potential success of a suit and ethnic origin. The most significant results concern ethnic origin as a reason which may prevent potential litigants from seeking legal redress.<sup>33</sup> Unfortunately, we do not have information on the ethnic background of respondents which may have influenced their views. Nonetheless, the data suggests that the older the lawyers, the more concerned they are with the problem of ethnic origin. For instance, 92.3% of lawyers aged 46 years and

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<sup>32</sup>  $\chi^2 = 20.73$ , which clearly exceeds the critical  $\chi^2_{0.10} = 10.645$  at d.f. = 6,  $p = 0.002$ .

<sup>33</sup>  $\chi^2 = 26.34$ , which clearly exceeds the critical  $\chi^2_{0.10} = 10.645$  at d.f. = 6,  $p = 0.0002$ .

more regard ethnic origin as a very important or an important problem of access to courts, while only 28.0% of lawyers aged between 25 and 30 regard ethnic origin as a very important or an important problem (see Appendix B, Table B.7.). These results suggest that older lawyers with more professional experience find specific problems of access to courts, particularly ethnic origin, as more severe than the other lawyers. But the results do not support our original hypotheses that older and more experienced lawyers would generally find the problems of access to courts as more severe than younger and less experienced lawyers.

To sum up, this sub-section has shown that, in the view of legal practitioners in Nigeria, the problems of access to courts are very severe in Nigeria. Particularly severe obstacles are the lack of funds and the ignorance of litigants. An important part of the data, in particular the views of the lawyers with previous oil industry contacts, suggests that the problems are more severe in oil related litigation than in other types of litigation.

The survey results suggest that some of Degni-Segui's earlier speculations on barriers to justice mentioned at the outset are not backed by empirical research. Most notably, this survey does not identify the geographical distance to courts as a particularly severe problem of access to courts. Rather geographical distance is regarded as part of financial problems which prevent litigants from travelling to courts. The other speculations of Degni-Segui on barriers to justice are largely confirmed by our survey. Three out of five problems cited by Degni-Segui - lack of funds, delay in the disposal of cases and ignorance - feature prominently among the problems of access to courts cited by Nigerian lawyers. As Degni-Segui has argued, the obstacles of access to courts are

further compounded by African political systems such as through authoritarian rule and its impact on the judiciary. The situation of the judiciary and extra-judicial pressures in Nigeria are assessed in the next sub-section.

## **Main Survey Results: The Nigerian Judiciary**

### **4.7. Functioning of the Judiciary and the Court System**

That access to courts is only one of the problems in the functioning of Nigeria's legal system is self-evident. Litigants also face problems once they have filed a lawsuit. These problems result from the deficiencies in the day-to-day operations of the judiciary and the legal system. Such impediments include interference from the executive branch of the government and underfunding. In 1994, the Eso Panel, under the retired judge of the Supreme Court Kayode Eso, submitted a report on the situation of the judiciary to the government. The Eso Panel reportedly described the judiciary as a 'disaster institution'. The report was said to have concluded that *'after 34 years of [Nigeria's] independence, there are not the necessary physical structures - that is, court halls, judges residence, libraries, vehicles, stationary, and indeed, toilets'* (CLO 1995, 165-168). The detailed findings of the report have never been disclosed in public but leaks to the press suggested that the Eso Panel produced four main findings. First, the judiciary was considered too dependent on the executive arm of the government. Second, the appointment of judges was regarded as too arbitrary. Third, the funding of the legal system was said to be too little. Fourth, congestion in the courts was seen as too high. Survey respondents confirm

all the findings of the Eso Panel. Of all respondents, 89.6% agree that the judiciary is too dependent on the executive arm of the government, 74.7% agree that the appointment of judges is too arbitrary and 89.6% agree that the funding of the legal system is too little. Some 90.2% consider congestion in the courts too high (see Table 4.9.). If 'no responses' were subtracted, the results would become even more impressive. What emerges is that the Nigerian judiciary faces severe impediments to its functioning.

**Table 4.9. Answer to question 14 'Do you agree/disagree with the following statements?'**

	Strongly disagree	Disagree	Neither agree/disagree	Agree	Strongly agree	No response
<i>The judiciary is too dependent on the executive arm of the government</i>	1.3	0.6	4.5	5.2	84.4	3.9
Cumulative percentage	1.3	1.9	6.4	11.6	96.0	99.9
<i>The appointment of judges is too arbitrary</i>	9.1	3.2	9.1	20.8	53.9	3.9
Cumulative percentage	9.1	12.3	21.4	42.2	96.1	100.0
<i>The funding of the legal system is too little</i>	3.2	0.6	2.6	2.6	87.0	3.9
Cumulative percentage	3.2	3.8	6.4	9.0	96.0	99.9
<i>Congestion in the courts is too high</i>	3.9	1.3	0.6	0.6	89.6	3.9
Cumulative percentage	3.9	5.2	5.8	6.4	96.0	99.9

While cross-tabulations generally reveal little variation in the respondents' views on the question of the Nigerian judiciary, the views of commercial lawyers differ on 3 out of 4 questions. Commercial lawyers regard the problems of the judiciary as more severe than the other lawyers. The most significant results concern the question on the funding of the legal system. Of all commercial lawyers, 94.9% strongly agree that the legal system is underfunded, compared with 69.2% of the other lawyers (see Table 4.10.).<sup>34</sup> It could

<sup>34</sup>  $\chi^2 = 11.99$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.0005$ .

be argued that commercial lawyers are predictably more concerned with monetary issues than the other lawyers. But this hypothesis cannot explain why commercial lawyers are more concerned about the situation of the judiciary in general. Of the commercial lawyers, 88.9% strongly agree that the judiciary is too dependent on the executive arm of the government, compared with 73.1% of the other lawyers.<sup>35</sup> A total of 96.0% of the commercial lawyers strongly agree that the congestion in the courts is too high, compared with 80.8% of the other lawyers (see Table 4.10).<sup>36</sup> An explanation for these differences may simply be that the government is more likely to intervene in commercial cases than in other cases, which could explain why commercial lawyers experience more impediments to the functioning of the judiciary.

**Table 4.10. Answers to questions 5 and 14: Responses of commercial lawyers on whether they agree/disagree with the following statements (per cent)**

	Strongly disagree	Disagree	Neither agree/disagree	Agree	Strongly agree
<i>The funding of the legal system is too little</i>					
Commercial lawyers	2.0	0	1.0	2.0	94.9
Other lawyers	11.5	3.8	11.5	3.8	69.2
<i>The judiciary is too dependent on the executive arm of the government</i>					
Commercial lawyers	2.0	0	4.0	5.1	88.9
Other lawyers	0	3.8	11.5	11.5	73.1
<i>Congestion in the courts is too high</i>					
Commercial lawyers	3.0	0	1.0	0	96.0
Other lawyers	11.5	7.7	0	0	80.8

<sup>35</sup>  $\chi^2 = 2.99$ , which exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.084$ .

<sup>36</sup>  $\chi^2 = 5.02$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.025$ .

Lawyers in this survey appear to regard the non-democratic nature of military rule as the main cause of the impediments faced by the judiciary. Kayode Eso confirmed this view by writing in a newspaper article: *'There can never be independence of the judiciary in a non-democratic setting'*.<sup>37</sup> According to Nigerian lawyers, the nature of military rule leads to interference from the executive and the arbitrary appointment of judges and, more generally, to a less favourable treatment of the Nigerian judiciary by the government. As we shall see later, the extra-judicial pressures of the military government play an important role in court proceedings.

Two of the problems revealed by the Eso Panel and the survey further compound the obstacles of access to courts in Nigeria: congestion of courts and the arbitrary appointment of the judiciary. Congestion of courts leads to the delay in the disposal of cases, while the appointment of government-backed judges increases the uncertainty about the potential success of a suit.

The congestion of courts manifests itself through the high number of pending cases. Cases in Nigerian courts including appeals may take over 10 years before reaching a final verdict. Sometimes the original litigants will have died by the time the judgment is made. No figures exist for the whole of Nigeria on the number of pending cases, but a report commissioned for the Shell-initiated Niger Delta Environmental Survey (NDES) provides detailed figures for Rivers State, one of the key oil producing areas. The number of cases in Rivers State carried from the previous year has been steadily growing, for

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<sup>37</sup> Kayode Eso, 'Judicial Independence in the Post-Colonial Era' (*Guardian*, Lagos, 27 January 1997).

instance, 17,304 cases were carried over from 1995 to 1996, while only 2,847 cases were disposed of in 1995 (see Table 4.11.).

**Table 4.11. Cases in Rivers State disposed of and carried over for 1993-1996 legal year**

	1994	1995	1996
Cases filed	6,552	5,045	-
Cases pending	-	19,187	18,671
Cases disposed of	4,905	2,847	2,929
Cases carried from previous year	15,215	16,939	17,304

Source: Ogbnigwe (1996).

The delay in the disposal of cases together with uncertainty about the potential success of a suit may discourage a potential litigant. In addition, while the court case is pending, a litigant may be left without any means to support himself. In *Eze v. Agip*<sup>38</sup>, the plaintiff sued Agip for the destruction of his house and his property at the Akri flowstation in Imo State. He reportedly lost his house as a result of oil operations but had received no compensation from the oil company. He testified that he had been squatting with a friend, while his family had to stay permanently away from him. So when the case was adjourned, he felt that he could not wait until the scheduled day of proceeding and asked for an accelerated hearing. The judge refused the application on the grounds that the plaintiff failed to '*show special and exceptional circumstances justifying such application*'. The above case exemplifies that the delay in the disposal of cases may discourage potential plaintiffs from instituting a lawsuit.

<sup>38</sup> (1979) IMSLR.



While the delay in the disposal of cases may discourage potential plaintiffs, the arbitrary appointment of judges by the military may alter the outcome of court cases in favour of the government, its agencies and business partners in the private sector. A commercial lawyer from Lagos commented on the appointment of judges: *'The way our judges are being appointed can be said to be responsible for them being subservient to the executive arm of government thus allowing it to manipulate the judges anyhow to serve their selfish ends as a result of which there is no justice in Nigeria'*.<sup>39</sup> Since the return of the military to power in 1983, judges of federal courts and state high courts were appointed by the Supreme Military Council, which later became the Armed Forces Ruling Council (AFRC). Appointments are made on the advice of the Advisory Judicial Committee, whose membership includes the Chief Justice, the Attorney-General and various other judges from the federal states. Judges of inferior state courts are appointed by the military governors of the federal states. Judges have theoretically a guaranteed tenure of office until retirement, but they may be dismissed by the AFRC at times on the advice of the Advisory Judicial Committee (Nwankwo *et al.* 1993, 20-26).<sup>40</sup> In a few instances, the military removed judges without advice. For instance, the government removed sixty high court judges in 1985 as part of a country-wide purge in the public service (Nwabueze 1992, 24).

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<sup>39</sup> Lawyer no.84, 1998 survey of Nigerian lawyers.

<sup>40</sup> As Eze (1996, 143-144) has pointed out, the 1979 Constitution provided for the appointment of judges through democratic processes. The Constitution provided, for example, that Supreme Court judges are to be appointed by the Nigerian president subject to a confirmation by a majority in the Senate, on the advice of the Federal Judicial Service Commission. However, the re-introduction of military rule in 1983 has shifted the responsibility for the appointment of judicial officers from democratic institutions to the military.

The problems of the arbitrary appointment of judges appear to be most severe with regards to military tribunals, in which government-appointed judges decide upon a case jointly with military officers. In terms of oil related litigation, the most prominent court case of a military tribunal was that against Ken Saro-Wiwa, leader of the Movement for the Survival of the Ogoni People (MOSOP), who was best known for his protests against Shell. Ken Saro-Wiwa and 14 other defendants were accused of murdering four traditional rulers in May 1994. Rather than allowing the case to be judged by a civilian court, general Abacha convened a so-called Civil Disturbances Special Tribunal in November 1994, which included two judges and a military officer. The tribunal's decisions were only considered effective upon confirmation by the Armed Forces Ruling Council (AFRC) and they carried no right of appeal. A report by Michael Birnbaum QC (1995), a British barrister, has suggested that the trial was not fair and that there were doubts as to its legality. Birnbaum (1995, 8) has concluded that there was no reason for the appointment of the military tribunal in the Saro-Wiwa case *'other than the desire of the Federal Military government that any trial.. should take place before a tribunal which it hopes will favour the prosecution and a desire to avoid the scrutiny of its case by the ordinary courts'*. Birnbaum has further averred that, overall, the tribunal *'has behaved in a way which strongly suggests that it is biased in favour of'* the government.<sup>41</sup> Despite concerns over the legality of the trial and the evidence presented, Ken Saro-Wiwa and eight others were sentenced to death in November 1995. The Saro-Wiwa case may have discouraged potential litigants from seeking legal redress in oil related matters. A female lawyer from Lagos comments that *'after Ken Saro-Wiwa a lot*

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<sup>41</sup> On the proceedings of the Saro-Wiwa case, see Birnbaum (1995).

*of people might not sue any oil company again'.<sup>42</sup>* In any case, the above lawsuit exemplifies how the appointment of judges may influence the outcome of a court case in favour of the government, which in turn reduces the certainty of the potential success of a case based on the strength of a legal argument.

The delay in the disposal of cases and the uncertainty about the potential success of a case compound the problems of access to courts. Combined with ignorance, financial problems and intimidation, the problems of the judiciary thus reduce the frequency of oil related litigation. Because of barriers to justice, compensation claims in the Nigerian oil industry are more likely to be settled before they come to court, even if the potential plaintiffs are dissatisfied with the payment offered by a company. Beyond the question of access to courts, the above discussion suggests that the judiciary faces substantial extra-judicial pressures from the government.

#### **4.8. Extra-Judicial Pressures and Enforcement of Court Orders**

The respondents confirm the view that the Nigerian judiciary is often under serious extra-judicial pressures from public and private bodies. Of all respondents, 50.0% state that judges, lawyers and other judicial officers encounter pressures from public or private institutions very often or often. According to 44.8% and 4.5%, pressures exist sometimes or rarely respectively. Not a single lawyer believes that there are never pressures (see Table 4.12.).

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<sup>42</sup> Lawyer no.88, 1998 survey of Nigerian lawyers.

**Table 4.12. Answers to question 8a 'Would you say that lawyers, judges or other judicial officers encounter outside pressures from private or public institutions in their work?'**

	Percentage of Respondents	Cumulative Percentage
Very often	20.1	20.1
Often	29.9	50.0
Sometimes	44.8	94.8
Rarely	4.5	99.3
Never	0	99.3
No response	0.6	99.9
Total	99.9	99.9

A significant proportion of the respondents suggest that the extra-judicial pressures are greater in oil related litigation. Excluding 'no responses' and 'don't knows', a clear majority - 54.1% - note that the difficulties are greater or much more severe in oil related litigation, while 35.0% state that the difficulties are the same. Only 10.8% state that the difficulties are less severe or much less severe (see columns 3 and 4, Table 4.13.). A Lagos lawyer comments that '*oil cases usually attract political considerations*'.<sup>43</sup> Another lawyer with 35 years of professional experience comments: '*oil cases often have political implications*'.<sup>44</sup> The relatively high percentage of respondents who note that the problems are the same or less severe in oil related litigation may suggest that extra-judicial pressures are not a particularly serious problem in some oil related cases, if compared with other types of litigation.

The extra-judicial pressures in oil related cases appear to depend primarily on the subject matter of a case. A commercial lawyer from Lagos differentiates between cases involving environmental damage and employment related cases. He argues that in court

<sup>43</sup> Lawyer no.58, 1998 survey of Nigerian lawyers.

<sup>44</sup> Lawyer no.74, 1998 survey of Nigerian lawyers.

cases involving environmental damage, as opposed to employment related cases, extra-judicial pressures from the government may be applied.<sup>45</sup> It is likely that the government does not intervene in every oil related case as there is a substantial quantity of those cases and many cases do not directly infringe on the interests of the government. Nonetheless, the majority of respondents suggests that problems in oil related litigation are, by and large, greater.

**Table 4.13. Answers to question 8b 'Are the difficulties more or less severe in oil company related litigation?'**

	1	2	3	4
	Percentage of Respondents	Cumulative Percentage	Percentage of Respondents (excl. 'no responses' and 'don't knows')	Cumulative Percentage (excl. 'no responses' and 'don't knows')
Much more severe	14.3	14.3	18.3	18.3
Greater	27.9	42.2	35.8	54.1
The same	27.3	69.5	35.0	89.1
Less severe	7.8	77.3	10.0	99.1
Much less severe	0.6	77.9	0.8	99.9
Don't know	16.2	94.1	-	-
No response	5.8	99.9	-	-
Total	99.9	99.9	99.9	99.9

The views on extra-judicial pressures differ according to professional background.<sup>46</sup> The views of commercial lawyers differ significantly from the rest.<sup>47</sup> Of all

<sup>45</sup> Lawyer no.108, 1998 survey of Nigerian lawyers.

<sup>46</sup> Lawyers who claim that they specialise in civil law or environmental law claim that the extra-judicial pressures are more severe in oil-related litigation. Lawyers who claim to be specialists in criminal law are, overall, more likely to believe that the extra-judicial pressures are less severe in oil-related litigation. A cross-tabulation between the attribute of size of a law firm and views on extra-judicial pressures also produces a significant chi-square value. But there is no discernible pattern as to how the size of a law firm determines views on these pressures.

<sup>47</sup>  $\chi^2 = 6.04$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.049$ .

commercial lawyers, 21.1% believe that extra-judicial pressures are much more severe in oil related litigation, compared with 8.3% of the other lawyers. Some 57.9% of the commercial lawyers state that these pressures are much more or more severe in oil related litigation, compared with 29.1% of the other lawyers (see Table 4.14). These results appear to suggest that extra-judicial pressures are greater in litigation involving commercial enterprises.

**Table 4.14. Answers to questions 5 and 8b: Responses of commercial lawyers on whether the extra-judicial pressures are more or less severe in oil related litigation (per cent)**

	Much more severe	Greater	The same	Less severe	Much less severe
Commercial lawyers	21.1	36.8	31.6	9.2	1.3
Cumulative percentage	21.1	57.9	89.5	98.7	100.0
Other lawyers	8.3	20.8	54.2	16.7	0
Cumulative percentage	8.3	29.1	83.3	100.0	100.0

Interestingly, lawyers who had previous contact with oil companies regard extra-judicial pressures as more severe than the other lawyers.<sup>48</sup> Of the respondents with previous oil industry contact, 55.2% state that extra-judicial pressures exist very often or often, compared with 29.2% of the other lawyers (see Table 4.15.). These results appear to confirm the earlier finding that there are more extra-judicial pressures in oil-related cases than in other types of litigation.

<sup>48</sup>  $\chi^2 = 6.004$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.05$ .

**Table 4.15. Answers to questions 6a and 8a: Responses of lawyers with previous contact with the oil industry on whether the legal system experiences extra-judicial pressures (per cent)**

	Very often	Often	Sometimes	Rarely	Never
Lawyers with previous contact in the oil industry	21.3	33.9	40.2	4.7	0
Cumulative percentage	21.3	55.2	95.4	100.1	100.1
Other lawyers	16.7	12.5	66.7	4.2	0
Cumulative percentage	16.7	29.2	95.9	100.1	100.1

Even if the outcome of a court case has not been influenced by extra-judicial pressures, the government may still attempt to prevent the enforcement of court orders, rulings and judgments. Of all respondents, 55.2% state that there are severe or very severe problems in the enforcement of court orders in Nigeria. A further 40.9% state that there are some difficulties and only 2.6% state that there are minor difficulties (see Table 4.16.). What emerges from these results is that the non-enforcement of court orders can be a major problem in litigation.

**Table 4.16. Answers to question 7a 'Would you say that there are difficulties in the enforcement of court orders, rulings or judgments?'**

	Percentage of Respondents	Cumulative Percentage
Very severe problems	26.0	26.0
Severe problems	29.2	55.2
Some difficulties	40.9	96.1
Minor difficulties	2.6	98.7
No difficulties	0.6	99.3
No response	0.6	99.9
Total	99.9	99.9

Several lawyers stress that the enforcement of court orders depends primarily on the interest of the government in a specific court case. The only respondent, who states that there are no difficulties in the enforcement of court orders, adds that there are indeed



difficulties in cases, in which *'the government has an interest to protect'*.<sup>49</sup> In order to enforce rulings against the government, a fiat of the Attorney-General is needed.<sup>50</sup> By implication, the Attorney-General decides in the last instance whether a ruling should be enforced or not. One lawyer from Lagos comments that *'It is pretty hard to enforce court orders in Nigeria, especially where the government has an interest and in any case one needs the blessing of the Attorney-General to enforce orders'*.<sup>51</sup> The Attorney-General has the power to stifle court judgments against the government.

Government interventions in the operations of the legal system do not only occur on behalf of federal agencies but also on behalf of local authorities and other public bodies. A lawyer from Lagos narrates a well-known court case in 1995, in which the Akwa Ibom State High Court pronounced a judgment against the state government. However, the government of the Akwa Ibom State refused to carry out the court order. The state government, moreover, put pressure on the high court judges to withdraw the court order by instructing the seizure of the official vehicles of all high court judges in the state and by evicting the judges from their residential quarters. At a later stage, the federal government reportedly mediated between the judges and the state government and the matter was settled.<sup>52</sup> Instances such as this may serve to intimidate judicial

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<sup>49</sup> Lawyer no.152, 1998 survey of Nigerian lawyers.

<sup>50</sup> Constitution (Suspension and Modification) Decree No.107 of 1993.

<sup>51</sup> Lawyer no.77, 1998 survey of Nigerian lawyers.

<sup>52</sup> Lawyer no.1, 1998 survey of Nigerian lawyers. This incident in Akwa Ibom State has also been reported in Olugboji (1996, 87). As another example of non-enforcement of court orders, Olugboji (1996, 89-90) has reported a case involving unjust dismissal from the police force. In 1994, the Abeokuta High Court ruled that two police officers, who were dismissed from the police force, be re-instated in their previous jobs and be paid their outstanding salaries and allowances as their dismissal was *'irregular and unconstitutional'*. Police authorities reportedly ignored the ruling.

officers and may discourage judges from pronouncing judgments against government institutions.

It is not entirely clear in what way the difficulties in the enforcement of court judgments in oil related litigation are different from other types of litigation. Excluding 'don't knows' and 'no responses', some 44.4% of the surveyed lawyers state that the problems are the same in oil related litigation and other types of litigation. 39.8% note that the problems are more severe or much more severe in oil related litigation. Only 15.8% state that the problems are less or much less severe in oil related litigation (see columns 3 and 4, Table 4.17.). The high percentage of respondents who note that the problems are greater in oil related cases suggests that there may be somewhat greater problems in oil related litigation, if compared with other types of litigation. Nonetheless, the data appears to indicate that the problems in oil related litigation are, by and large, comparable with other types of litigation.

These results suggest that it may be somewhat more difficult to enforce court orders in oil related cases but the data is not unequivocal on this point. What appears from some respondents' comments is that the difficulties in the enforcement of court orders in different types of litigation depend very much on the subject matter. As with general difficulties in the enforcement of court orders, lawyers state that the enforcement of court orders depends primarily on the interest of the government. A female lawyer from Lagos argues that the difficulties in oil related litigation '*depend on the interest of the government in the matter*'.<sup>53</sup> For instance, Olugboji (1996, 90) has reported a case, in which the Federal High Court in Benin City imposed a court order restraining the Oil

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<sup>53</sup> Lawyer no.88, 1998 survey of Nigerian lawyers.

Mineral Producing Areas Development Commission (OMPADEC) from swearing in Joseph Popo as the new commissioner for Delta State. The OMPADEC defied the court order and went ahead to swear in Popo as the new commissioner. The above discussion appears to suggest that a court order against the oil industry or the country's oil administration may not be enforced, if it is perceived as an infringement of the government's interests in the oil industry.

**Table 4.17. Answers to question 7b 'Are the difficulties more or less severe in oil company related litigation?'**

	1	2	3	4
	Percentage of Respondents	Cumulative Percentage	Percentage of Respondents (excl. 'no responses' and 'don't knows')	Cumulative Percentage (excl. 'no responses' and 'don't knows')
Much more severe	13.0	13.0	15.0	15.0
More severe	21.4	34.4	24.8	39.8
The same	38.3	72.7	44.4	84.2
Less severe	9.7	82.4	11.3	95.5
Much less severe	3.9	86.3	4.5	100.0
Don't know	11.0	97.3	-	-
No response	2.6	99.9	-	-
Total	99.9	99.9	100.0	100.0

The views on the enforcement of court orders vary somewhat according to professional background.<sup>54</sup> Above all, the views of environmental lawyers differ from

<sup>54</sup> Interesting findings concern the years of respondents' professional experience. In both cross-tabulations on attributes of years of professional experience and the enforcement of court orders, the chi-square tests of independence are significant. In general, the greater number of years of professional experience lawyers have, the more likely they are to state that there are serious difficulties in the enforcement of court orders. This may be explained by the assumption that lawyers with more years of professional experience are more likely to have experienced instances, in which court orders have not been enforced.

those of the other lawyers.<sup>55</sup> Of the environmental lawyers, 63.8% state that the difficulties in the enforcement of court orders are severe or very severe, compared with only 44.6% of the other lawyers (see Table 4.18.). A clear majority of the environmental lawyers - 53.3% - state that these difficulties are more severe in oil related litigation, compared with 23.5% of the other lawyers (see Table 4.19.). This suggests that the enforcement of court orders is more difficult in court cases involving environmental matters. By implication, it has to be assumed that the enforcement of court orders in oil related cases involving environmental damage is likely to be more difficult than in other oil related cases such as employment related litigation.

**Table 4.18. Answers to questions 5 and 7a: Responses of environmental lawyers on whether there are problems in the enforcement of court orders (per cent)**

	Very severe problems	Severe problems	Some difficulties	Minor difficulties	No difficulties
Environmental lawyers	40.4	23.4	31.9	4.3	0
Cumulative percentage	40.4	63.8	95.7	100.0	100.0
Other lawyers	15.7	28.9	54.2	1.2	0
Cumulative percentage	15.7	44.6	98.8	100.0	100.0

**Table 4.19. Answers to questions 5 and 7b: Responses of environmental lawyers on whether these problems are more or less severe in oil related litigation (per cent)**

	Much more severe	More severe	The same	Less severe	Much less severe
Environmental lawyers	33.3	20.0	40.0	6.7	0
Cumulative percentage	33.3	53.3	93.3	100.0	100.0
Other lawyers	4.4	19.1	52.9	14.7	8.8
Cumulative percentage	4.4	23.5	76.4	91.1	99.9

<sup>55</sup> In respect of question 7a on the general difficulties in the enforcement of court orders, the results of cross-tabulations are as follows:  $\chi^2 = 10.11$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.006$ . In respect of question 7b on the difficulties in oil related litigation, the results of cross-tabulations are even more significant:  $\chi^2 = 19.76$ , which clearly exceeds the critical  $\chi^2_{0.10} = 6.251$ , at d.f. = 3,  $p = 0.0002$ .

The earlier speculation that the enforcement of court orders may be more difficult in oil related litigation appears to be strengthened by the replies of lawyers who had prior contact with oil companies.<sup>56</sup> Of those lawyers, 55.2% state that the difficulties are more severe or much more severe in oil related litigation, compared with 29.2% of the other lawyers (see Table 4.20.). These results appear to suggest that, overall, the enforcement of court orders in oil related cases is more difficult than in other types of litigation.

**Table 4.20. Answers to questions 6a and 7b: Responses of lawyers with previous contact with oil companies on whether problems of enforcement are more or less severe in oil related litigation (per cent)**

	Much more severe	More severe	The same	Less severe	Much less severe
Lawyers with previous contact	21.3	33.9	40.2	4.7	0
Cumulative percentage	21.3	55.2	95.4	100.1	100.1
Other lawyers	16.7	12.5	66.7	4.2	0
Cumulative percentage	16.7	29.2	95.9	100.1	100.1

To sum up, this sub-section has shown that the Nigerian judiciary and the court system face severe impediments to their functioning. Some of the key impediments include inadequate funding of the legal system by the government, extra-judicial pressures from the government and the high congestion in the courts. These results support Degni-Segui's contention that the problems of access to courts are further compounded by the nature of African political systems, in which the judiciary is under pressure from the executive branch of the government and is struggling to cope with the day-to-day running of the courts. The impediments to the functioning of the judiciary and the legal system appear to be much greater in court cases involving the government and somewhat greater

<sup>56</sup>  $\chi^2 = 6.00$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.050$ .

in oil related litigation. What must be remembered, nevertheless, is that the quality of legal services may differ from court to court.

## Secondary Survey Results

### 4.9. Types of Courts

That government pressure on judges or the quality of judicial services vary according to different types of courts is perhaps unsurprising. Of all respondents, 85.7% believe that there are major differences in the quality of judicial services in different Nigerian courts, only 8.4% believe the opposite, while 5.8% give no response. The Supreme Court, the highest Nigerian court, is regarded as the most competent Nigerian court, followed closely by the Court of Appeal. Of all surveyed lawyers, 38.3% and 50.6% consider the Supreme Court to be very competent and competent respectively. Some 31.2% and 59.1% regard the Court of Appeal as very competent and competent respectively. The other Nigerian courts are considered markedly less competent (see Table 4.21.). This can possibly be best explained by the fact that the Supreme Court and the Court of Appeal attract some of the best judicial officers within the court system. Judges of these two courts receive higher material benefits, including free housing, and enjoy higher prestige than those of the lower courts, which is likely to attract the most capable lawyers.<sup>57</sup> In addition, a court case in the Supreme Court is usually presided over

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<sup>57</sup> While judges of the Supreme Court and the Court of Appeal earn more than those of other types of courts, their remuneration is not excessively high. According to Nwankwo *et al.* (1993, 28), the Chief Justice of Nigeria, the highest paid judicial officer in the country, received 77,400 Naira per annum in 1993 (excluding housing and other additional benefits). At the 1993 official rate of exchange, this translated to about US\$ 3,500 per annum. In

by five judges, sometimes seven, while a court case in the Court of Appeal is usually presided over by three judges.<sup>58</sup> It is thus more likely that these courts can arrive at a more balanced and competent decision than all the other courts, which have only one judge presiding over a court case.

Of the other courts, the Federal High Court and the State High Courts are considered competent. Of all lawyers, 7.8% and 70.1% consider the Federal High Court very competent and competent respectively, while 3.9% and 74.0% consider the State High Courts very competent and competent respectively. The lower courts, the Magistrates Courts and the Customary Courts, are generally considered incompetent (see Table 4.21.). These differences can possibly be best explained by the fact that the Federal High Court and the State High Courts attract some of the best judicial officers from the lower courts. The best judges from the Magistrates Courts are often recruited by the State High Courts. The inadequacies of the Magistrates' and the Customary Courts may be explained as a result of the appointments of unqualified judicial officers and inadequate remuneration.<sup>59</sup> A commercial lawyer from Lagos comments: *'The level of experience required to be a magistrate (mostly 3 years plus at the Nigerian Bar), low salary scale, large volume of criminal cases, lack of adequate technological support, inexperience*

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comparison, Ibidapo-Obe (1995, 186) has revealed that some Nigerian legal practitioners charge a fee of between 250,000 and 1,000,000 Naira for a single brief. Nwankwo *et al.* (1993, 28) have commented: *'The low wages attributed to judicial officers have discouraged independent-minded lawyers in private legal practice from taking up positions in the bench, as such lawyers are reluctant to give up relatively lucrative private practices for poor judicial positions'*.

<sup>58</sup> Section 214 of the 1979 Constitution provided that the Supreme Court must consist of not less than 5 justices for the purpose of an appeal from the Court of Appeal. If an appeal deals with constitutional issues, the court must be constituted by 7 justices. Section 226 of the 1979 Constitution provided that the Court of Appeal must consist of not less than 3 justices.

<sup>59</sup> A comprehensive report on the administration of justice in the Magistrates and Customary Courts in Southern Nigeria was undertaken by the Civil Liberties Organisation (Onyekpere 1996).



*and venality have conspired to make the magistrate court the acme of gross abuse of judicial process in Nigeria'.<sup>60</sup>*

**Table 4.21. Answers to question 16b 'Which type of court would you judge as particularly competent or incompetent?' (per cent)**

	Very competent	Competent	Incompetent	Don't know	No response
Supreme Court	38.3	50.6	3.9	1.9	5.2
Court of Appeal	31.2	59.1	4.5	0.6	4.5
Federal High Court	7.8	70.1	8.4	7.1	6.5
State High Courts	3.9	74.0	10.4	2.6	9.1
Magistrates Courts	3.9	16.9	55.8	17.5	5.8
Customary Courts	5.2	7.1	52.6	29.2	5.8

Several respondents emphasise that there are regional differences between courts in different federal states and personal differences between different judicial officers. Moreover, the quality of judicial services is not the same as the quality of justice. While a court may be competent in terms of substantive and procedural law, it is not necessarily independent from public or private bodies. The greatest challenge to the independence of the court system comes from the military governments. The military, which has governed Nigeria for most of the country's history since 1966, has ruled by decree and courts have been forbidden to question the validity of a decree. The military has, moreover, set up tribunals made up predominantly of members of the armed forces to try criminals and government critics.<sup>61</sup>

<sup>60</sup> Lawyer no.108, 1998 survey of Nigerian lawyers.

<sup>61</sup> On military rule and its effect on the Nigerian legal system, see Nwabueze (1992).

The views on the court system vary somewhat according to professional background.<sup>62</sup> Commercial lawyers are more likely than others to observe differences between different types of courts.<sup>63</sup> Of the commercial lawyers, 94.7% believe that there are major differences between the quality of judicial services in different types of courts, while the figure for the other lawyers is 78.6% (see Appendix B, Table B.8.).

Commercial lawyers hold different views on the competence of the Federal High Court to the other lawyers.<sup>64</sup> Of those lawyers, 93.5% believe that the Federal High Court is either competent or very competent, compared with the figure of 78.3% for the other lawyers (see Appendix B, Table B.9.). These differences may be explained by the fact that the Federal High Court, which was formerly the Federal Revenue Court, is a court specialised in commercial litigation. It could be thus expected that the Federal High Court is more competent in commercial cases than other courts.

There are differences between lawyers from Lagos and Port Harcourt on the competence of the Federal High Court and the Magistrates Courts. The most significant difference concerns the general question on the quality of judicial services in Nigeria.<sup>65</sup> Of the Port Harcourt lawyers, 70.6% believe that there are major differences between the

<sup>62</sup> Some of these differences cannot be easily explained. Environmental lawyers view the Supreme Court and the State High Courts as more competent than other lawyers. Criminal lawyers view the Supreme Court and the Magistrates Courts as more competent than other lawyers. The size of law firms also influences views on the competence of different types of courts. But the author is unable to adequately explain these diverging views.

<sup>63</sup>  $\chi^2 = 6.94$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.024$ .

<sup>64</sup>  $\chi^2 = 3.40$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.065$ .

<sup>65</sup> Three cross-tabulations between the attribute of location of law firm and questions on the court system produce significant chi-square tests: on the general view on differences, on the competence of the Federal High Court and the Magistrates Courts. The chi-square test results for them are as follows:

- on views on the general differences between judicial services in different types of courts:  $\chi^2 = 9.86$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.007$ .
- on views on the Federal High Court:  $\chi^2 = 4.11$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.043$ .
- on views on the Magistrates Courts:  $\chi^2 = 6.33$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.012$ .

quality of judicial services in different types of courts, compared with the figure of 93.8% for the Lagos lawyers (see Appendix B, Table B.10.). These results appear to support the earlier speculation that there are regional differences between the judicial services of different types of courts.

Views on judicial services vary according to the years of professional experience. Lawyers with 6 or more years of professional experience are significantly more aware of differences between the quality of judicial services in Nigerian courts than lawyers with less than 6 years of experience.<sup>66</sup> Of the lawyers with less than 6 years of experience, 75.9% believe that there are major differences between the quality of judicial services in different types of courts, compared with the figure of 94.8% for the other lawyers (see Appendix B, Table B.11.). These results would suggest that it may take up to 6 years of professional experience for some lawyers to realise that there are major differences.

A number of respondents emphasise that the Federal High Court, albeit generally competent in terms of law, is particularly vulnerable to government pressures.<sup>67</sup> One lawyer, who regards the court as very competent, writes that the *'Federal High Court often seems to see itself as an appendage of the federal government and this tends to affect its judgments especially where the government is a party'*.<sup>68</sup> Another lawyer compares the independence of different types of courts and concludes: *'From my*

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<sup>66</sup>  $\chi^2 = 8.03$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.005$ .

<sup>67</sup> This view has also been expressed by a number of Nigerian scholars. Oyakhirome (1995, 177), for instance, has commented: *'...It may be argued that the existence of Federal High Courts exercising exclusive jurisdiction in matters or causes on the exclusive list will enable the federal government to protect itself and enforce its own laws through its own judicial agencies'*. Oyakhirome (1995, 179) has further averred that, in a military dictatorship, the Federal High Court *'could become a ready tool to suppress advocates of human rights and democracy'*.

<sup>68</sup> Lawyer no.63, 1998 survey of Nigerian lawyers.

*professional experience, judges of the Federal High Court are much more timid as compared, for instance, with the judges of the State High Courts'.<sup>69</sup>*

The vulnerability of the Federal High Court to government pressures has wide repercussions on oil related litigation. The Constitution (Suspension and Modification) Decree No.107 divested State High Courts of jurisdiction over oil matters in 1993 (see section three of the thesis). In Nigeria, there are only roughly a dozen Federal High Court divisions, compared with over 540 State High Court divisions. Potential litigants may, therefore, find it more difficult to travel to the Federal High Court. It can be thus expected that the Act will effectively reduce the amount of litigation against oil companies. Moreover, as indicated by respondents, the Federal High Court appears to be more dependent on the executive arm of the government. This is likely to result in more favourable court judgments for oil companies who have joint-ventures and common interests with the government. A number of respondents stress that judges of the Federal High Court are also less likely to sympathise with the plight of village communities affected by oil operations because they tend to come from outside the oil producing areas. For instance, the sole judge of the Federal High Court in Port Harcourt, the main oil city, was appointed from Lagos, while a number of the State High Court judges in Rivers State have originally come from some of the oil producing areas.

What the above discussion suggests is that the Federal High Court is likely to be biased in favour of oil companies. A ruling by the Federal High Court can, of course, be appealed against, in which case the Court of Appeal or the Supreme Court will ultimately

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<sup>69</sup> Lawyer no.16, 1998 survey of Nigerian lawyers.

decide upon the case. But any appeal to a higher court is likely to be limited to questions of law. The witness evidence admitted by the Federal High Court is likely to be taken for granted by the appellate court. That means, a less sympathetic judge in the Federal High Court may dismiss some of the plaintiff's vital evidence. This would in turn decrease the chances of success for the plaintiff's appeal in oil related litigation. In other words, it is conceivable that the Federal High Court is more likely to dismiss the plaintiff's evidence against an oil company or the government than a State High Court judge. For all the above reasons, the 1993 Act and the current structure of the court system benefit the oil companies more than the opposing litigants because they limit the access to courts for potential litigants and their prospects of success.<sup>70</sup>

While the Federal High Court appears to be less independent from the government, other courts may face government pressures, too. One lawyer with 20 years of professional experience argued that the Supreme Court, the most competent of all Nigerian courts, has become less independent since its relocation from Lagos to the capital in Abuja. While important distinctions remain between different types of courts, lawyers stress that, notwithstanding the type of court, the integrity of a particular judge and the subject matter of a lawsuit may often be the most important factors in determining the quality of justice.

To sum up, this sub-section has shown that there are wide differences in the quality of judicial services between different types of courts. The Supreme Court and the Court of Appeal appear to be the most competent Nigerian courts. The Federal High

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<sup>70</sup> It has to be remembered, however, that the interpretation of the 1993 Decree has not been entirely unambiguous. In *Shell v. Isaiah* [1997] 6 NWLR, the Court of Appeal pronounced that the 1993 Decree does not affect oil spillage matters (see section three of the thesis).

Court, which became the court of first instance for oil related litigation in 1993, appears to be somewhat biased in favour of oil companies.

#### 4.10. Oil companies and court procedure

Previous analysis indicates that the court system tends to be biased in favour of oil companies rather than the opposing litigants. This sub-section discusses in greater detail how oil companies and courts conduct themselves in oil related litigation. This provides a background for analysing legal disputes between oil companies and village communities.

The answers of all respondents do not suggest that litigants in oil related cases are treated particularly unfairly by the courts. Of all respondents, 36.3% state that litigants are treated unfairly or very unfairly, compared with 32.4% who state that litigants are treated fairly or very fairly (see Table 4.22.).

**Table 4.22. Answers to question 9a 'Are litigants treated fairly in court decisions involving oil companies?'**

	Percentage of Respondents	Cumulative Percentage
Very fairly	1.9	1.9
Fairly	30.5	32.4
Neither fairly nor unfairly	10.4	42.8
Unfairly	24.0	66.8
Very unfairly	12.3	79.1
Don't know	14.9	94.0
No response	5.8	99.8
Total	99.8	99.8

There are significant differences between the views of different groups of lawyers on fair treatment in court proceedings. Lawyers, who previously worked for an oil

company, are more likely to state that litigants are treated fairly.<sup>71</sup> Of the oil company lawyers, 44.4% state that litigants are treated fairly, compared with the figure of 31.9% for the other lawyers (see Appendix B, Table B.12.). This may be explained by the assumption that the oil company lawyers are less likely to observe unfair treatment of the opposing party.

Commercial lawyers are more likely to observe unfair treatment of litigants in oil related litigation.<sup>72</sup> Of the commercial lawyers, 46.9% state that litigants are treated unfairly or very unfairly, compared with 22.7% for the other lawyers (see Appendix B, Table B.13.). These results suggest that unfair treatment of litigants is a realistic possibility in a commercial environment.

Environmental lawyers, like commercial lawyers, are more likely to note unfair treatment of litigants in oil related litigation.<sup>73</sup> Of those lawyers, 57.5% note that litigants are treated unfairly or very unfairly, compared with 31.2% for the other lawyers (see Appendix B, Table B.14.). These results suggest that unfair treatment of litigants is a realistic possibility in environmental cases involving oil companies. Unfortunately, respondents do not provide examples of instances in which litigants were treated unfairly. What the views of commercial and environmental lawyers may indicate is that, while unfair treatment is not the norm in oil related litigation, litigants may be treated unfairly in specific cases. In particular, litigants may be more likely to be treated unfairly in litigation involving environmental damage.

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<sup>71</sup>  $\chi^2 = 7.79$ , which clearly exceeds the critical  $\chi^2_{0.10} = 6.251$ , at d.f. = 3,  $p = 0.051$ .

<sup>72</sup>  $\chi^2 = 3.18$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.074$ .

<sup>73</sup>  $\chi^2 = 8.55$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.014$ .



While there may be instances in which litigants have been treated unfairly in court decisions, one may also ask whether litigants have been treated fairly by the representatives of the oil companies in court proceedings. Excluding 'don't knows' and 'no responses', a significant minority of all respondents - 43.4% - state that oil companies, their subsidiaries or contractors conduct themselves ethically in court proceedings often or very often. Nonetheless, a majority of the respondents - 56.6% - believe that oil companies conduct themselves ethically only sometimes, rarely or never (see columns 3 and 4, Table 4.23.). Unfortunately, respondents do not provide examples of such instances. Our results suggest that, while the understanding of professional ethics may differ between lawyers, there appear to exist numerous instances, in which oil companies do not conduct themselves ethically in court proceedings.

**Table 4.23. Answers to question 9b 'Do you think oil companies, their subsidiaries and contractors conduct themselves ethically in court proceedings?'**

	1	2	3	4
	Percentage of Respondents	Cumulative Percentage	Percentage of Respondents (excl. 'don't knows' and 'no responses')	Cumulative Percentage (excl. 'don't knows' and 'no responses')
Very often	6.5	6.5	9.4	9.4
Often	23.4	29.9	34.0	43.4
Sometimes	32.5	62.4	47.2	90.6
Rarely	5.8	68.2	8.5	99.1
Never	0.6	68.8	0.9	100.0
Don't know	26.0	94.8	-	-
No response	5.2	100.0	-	-
Total	100.0	100.0	100.0	100.0

Respondents' views on ethical conduct in court proceedings vary according to professional background and location. Oil company lawyers are less likely to believe that oil companies conduct themselves unethically.<sup>74</sup> Of those lawyers, 52.3% note that oil companies conduct themselves ethically in court proceedings often or very often, while the figure for the other lawyers is 30.0% (see Appendix B, Table B.15.). These results are perhaps not surprising since, by answering the question on ethical conduct, oil company lawyers had to effectively assess their own work and the work of their clients in court proceedings. It could be expected that fewer oil company lawyers would accuse themselves, their colleagues or their clients of unethical conduct.

Commercial lawyers, like oil company lawyers, are slightly less likely to believe that oil companies conduct themselves unethically.<sup>75</sup> Of the commercial lawyers, 47.8% state that oil companies conduct themselves ethically in court proceedings often or very often, while the figure for the other lawyers is 45.8%. Some 47.8% of the commercial lawyers note that oil companies conduct themselves ethically in court proceedings sometimes, compared with only 33.3% of the other lawyers (see Appendix B, Table B.16.). These differences may possibly be explained by the fact that many commercial lawyers are also oil company lawyers.

Interestingly, the views on ethical conduct vary according to location. Lagos lawyers are more likely to say that oil companies conduct themselves ethically, if compared with Port Harcourt lawyers.<sup>76</sup> Of the Lagos lawyers, 46.7% state that oil

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<sup>74</sup>  $\chi^2 = 6.35$ , which marginally exceeds the critical  $\chi^2_{0.10} = 6.251$ , at d.f. = 3,  $p = 0.096$ .

<sup>75</sup>  $\chi^2 = 6.49$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.039$ .

<sup>76</sup>  $\chi^2 = 13.91$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.001$ .

companies conduct themselves ethically in court proceedings often or very often, while the figure for the Port Harcourt lawyers is only 26.6% (see Appendix B, Table B.17.). These results indicate that there are regional differences in the way that oil companies conduct themselves in court proceedings. They may suggest that oil companies conduct themselves less ethically in court proceedings in the oil producing areas such as Port Harcourt.

While there may be numerous instances, in which oil companies conduct themselves unethically in court proceedings, one cannot take for granted that judges are necessarily biased in favour of oil companies. Some judges, especially those from the oil producing areas may indeed be biased against oil companies. A Port Harcourt lawyer states: *'Some judges especially from an oil producing area dislike oil companies because of their dirty politics in Nigeria'*.<sup>77</sup> The view that judges from the oil producing areas are biased against oil companies was supported by M.B. Belgore, Chief Justice of the Federal High Court. Belgore stated in an interview with the author that judges from Port Harcourt or Warri are more likely to rule in favour of village communities. Said Belgore: *'Judges, who are from the area in which they are involved themselves, use their discretion more freely to the party than a judge who is a little more detached'*.<sup>78</sup> Nonetheless, roughly half of the respondents state that courts are biased in favour of oil companies, while only 16.8% state that courts are biased in favour of opposing litigants (see Table 4.24.). These results suggest that the courts are, overall, biased more in favour of oil companies than the opposing litigant.

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<sup>77</sup> Lawyer no.152, 1998 survey of Nigerian lawyers.

<sup>78</sup> Personal interview with M.B. Belgore, Chief Justice of the Federal High Court (Lagos, March 1998).

**Table 4.24. Answers to question 9c 'Would you say that courts are biased in favour of the oil company or the opposing litigant?'**

	Percentage of Respondents	Cumulative Percentage		Percentage of Respondents	Cumulative Percentage
Severe bias in favour of oil company	5.2	5.2	Severe bias in favour of opposing litigant	3.2	3.2
Some bias in favour of oil company	44.8	50.0	Some bias in favour of opposing litigant	13.6	16.8
No bias in favour of oil company	18.2	68.2	No bias in favour of opposing litigant	34.4	51.2
Don't know	19.5	87.7	Don't know	18.8	70
No response	12.3	100.0	No response	29.9	99.9
Total	100.0	100.0	Total	99.9	99.9

There are significant differences between oil company lawyers and others on the bias of courts.<sup>79</sup> Of the oil company lawyers, 44.7% state that courts are biased in favour of opposing litigants, compared with 15.6% for the other lawyers (see Appendix B, Table B.18.). Lawyers who acted as counsel in a lawsuit against an oil company are of the opposite view to oil company lawyers. Some 17.3% of those lawyers note that the courts are biased in favour of the opposing litigants, compared with 63.0% of the other lawyers (see Appendix B, Table B.19.). These results are perhaps not surprising since lawyers are less likely to regard courts as biased in favour of their own clients.

While the courts appear to generally favour oil companies, respondents have also been asked what specific reasons exist as to why courts may encounter difficulties in judging oil related cases fairly. Respondents' replies are somewhat distorted because of the uneven numbers of 'no responses', which range from 16.2% to 21.4% (see Table

<sup>79</sup>  $\chi^2 = 6.02$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.014$ .

4.25.). Excluding 'no responses', some 51.6% of the surveyed lawyers note that lack of funds is a very important reason why courts might encounter difficulties in judging oil related cases fairly, while outside pressures are viewed as a very important reason by 49.6% of the respondents. Some 40.5% consider incompetence of witnesses a very important reason (see Table 4.26.). The former two reasons - the lack of funds and outside pressures - are general problems of the Nigerian judiciary. Incompetence of witnesses is a problem lying outside the scope of the judiciary and may be partly ascribed to the lack of general education. One could expect that the incompetence of witnesses is a particularly important problem in environmental litigation, in which expert evidence and technical knowledge is particularly relevant, if compared, for instance, with employment related cases.

**Table 4.25. Answer to question 9d 'Amongst the following rank reasons why courts might encounter difficulties in judging oil related cases fairly' (per cent)**

	Very important reason	Important reason	Less important reason	No response
Outside pressures	41.6	33.1	9.1	16.2
Lack of funds	40.9	18.8	19.5	20.8
Incompetence of witnesses	31.8	24.0	22.7	21.4
Lack of knowledge of oil technology	24.0	39.0	19.5	17.5
Lack of time	11.7	44.2	24.7	19.5
Lack of witnesses	9.7	30.5	39.6	20.1
Resources and skill of oil company's counsel	7.8	41.6	31.8	18.8

**Table 4.26. Answer to question 9d 'Amongst the following rank reasons why courts might encounter difficulties in judging oil related cases fairly' (per cent) (excluding 'no responses')**

	Very important reason	Important reason	Less important reason
Lack of funds	51.6	23.8	24.6
Outside pressures	49.6	39.5	10.9
Incompetence of witnesses	40.5	30.6	28.9
Lack of knowledge of oil technology	29.1	47.2	23.6
Lack of time	14.5	54.8	30.6
Lack of witnesses	12.2	38.2	49.6
Resources and skill of oil company's counsel	9.6	51.2	39.2

The respondents' views differ significantly with regards to reasons of why courts may encounter difficulties in judging oil related cases fairly. Of all cross-tabulations performed, the most significant results occur in respect of the lack of funds, which is seen as the key reason why courts might encounter difficulties in oil related litigation. Views differ according to experience and age. The more professional experience respondents have, the more importance they attach to the courts' lack of funds.<sup>80</sup> Of the lawyers with 1 to 5 years of professional experience, 31.8% consider the lack of funds a very important problem, while 80.0% of the lawyers with 21 or more years of professional experience consider it a very important problem (see Appendix B, Table B.20.). Similarly, the older the lawyers are, the more importance they attach to the courts' lack of funds.<sup>81</sup> Of the lawyers aged between 25 and 30, 26.1% consider the lack of funds a very important problem, while 83.3% of the lawyers aged 46 years and over view it as a very important problem (see Appendix B, Table B.21.). If it is assumed that older and more experienced lawyers are in a better position to comment on the legal profession, it has to be assumed

<sup>80</sup>  $\chi^2 = 9.36$ , which clearly exceeds the critical  $\chi^2_{0.10} = 6.251$ , at d.f. = 3,  $p = 0.025$ .

<sup>81</sup>  $\chi^2 = 21.28$ , which clearly exceeds the critical  $\chi^2_{0.10} = 7.779$ , at d.f. = 4,  $p = 0.0002$ .

that the lack of funds is the crucial problem facing courts in judging oil related litigation fairly.

Environmental lawyers, like older and more experienced lawyers, regard the lack of funds as the most important problem which courts face in judging oil related cases.<sup>82</sup> Of the environmental lawyers, 68.6% believe that the lack of funds is a very important problem, compared with 36.2% of the other lawyers (see Appendix B, Table B.22.). This may suggest that lack of funds is more important in oil related litigation involving environmental damage than in other types of oil related litigation.

The lack of funds has been identified as the key problem courts face in judging oil related cases. Resources and skill of oil company's counsel have been identified by all respondents as the least important problem. But there is a wide disparity of views on the problem of resources and skill of oil company's counsel across professional background and age. Of the lawyers aged between 25 and 30, 39.1% regard resources and skill of oil company's counsel as an important or a very important problem, compared with the figure of 100.0% for the lawyers aged 46 years and over (see Appendix B, Table B.23.).<sup>83</sup> This may suggest that resources and skill of oil company's counsel may be a very prominent problem, if one looks closer at the respondents' replies.

Environmental lawyers, like older lawyers, are more likely to state that resources and skill of oil company's counsel is an important problem that courts face in judging oil

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<sup>82</sup>  $\chi^2 = 9.96$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.007$ .

<sup>83</sup>  $\chi^2 = 11.68$ , which clearly exceeds the critical  $\chi^2_{0.10} = 6.251$ , at d.f. = 3,  $p = 0.009$ . The cross-tabulation with the attribute of professional experience also produces a significant chi-square value:  $\chi^2 = 12.30$ , which clearly exceeds the critical  $\chi^2_{0.10} = 6.251$ , at d.f. = 3,  $p = 0.006$ . While the results are somewhat less clear-cut than for the attribute of age, broadly speaking, one can say that, the more professional experience respondents have, the more importance they attach to the resources and skill of oil company's counsel.



related cases than the other lawyers. Of the environmental lawyers, 76.9% consider resources and skill of oil company's counsel an important or a very important problem, compared with 51.4% of the other lawyers (see Appendix B, Table B.24.).<sup>84</sup> This may suggest that resources and skill of oil company lawyers may play a greater role in oil related cases involving environmental damage than in other types of oil related litigation.

The earlier discussion suggests that Nigerian courts are heavily impeded in deciding upon oil related cases, particularly in environmental litigation, and may tend to be biased in favour of oil companies. That these impediments have an impact on the final court judgments is self-evident. One indicator of the quality of final court judgments is the level of compensation awarded by courts. Respondents have been asked whether compensation paid by oil companies for damages in tort is unfair to either oil companies or the opposing litigant. Excluding 'don't knows' and 'no responses', some 79.1% of the surveyed lawyers believe that the compensation paid by oil companies for damages in tort is unfair to the opposing litigant, while 8.2% believe the opposite (see columns 3 and 4, Table 4.27.). These results unequivocally suggest that court judgments tend to be unfair to the opposing litigants. Several lawyers, mainly environmental lawyers, note that the compensation regime for oil operations in Nigeria is grossly inadequate. One lawyer from Lagos, who previously worked for the oil industry, comments that '*compensation for oil pollution is not adequate. An independent commission might make a difference*'.<sup>85</sup> The views of environmental lawyers do not differ from the views of the other lawyers, so one cannot clearly say that compensation is more or less unfair to opposing litigants in

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<sup>84</sup>  $\chi^2 = 6.74$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.034$ .

<sup>85</sup> Lawyer no.24, 1998 survey of Nigerian lawyers.

environmental litigation. Nonetheless, it can be reasonably assumed that the respondents' views on compensation paid in tort are mainly based on their experiences with oil related cases involving environmental damage because tort law in Nigeria's oil related cases is mainly utilised in respect of environmental litigation such as litigation resulting from oil spills. By implication, it has to be assumed that compensation paid by oil companies in environmental litigation tends to be unfair to the opposing litigant.

**Table 4.27. Answers to question 10 'Would you consider the compensation paid by oil companies for damages in tort as...'**

	1	2	3	4
	Percentage of Respondents	Cumulative Percentage	Percentage of Respondents (excl. 'don't knows and 'no responses')	Cumulative Percentage (excl. 'don't knows and 'no responses')
Unfair to oil companies as much too high	1.3	1.3	1.5	1.5
Unfair to oil companies as somewhat too high	5.8	7.1	6.7	8.2
Fair and justified	11.0	18.1	12.7	20.9
Unfair to opposing litigant as somewhat too low	39.0	57.1	44.8	65.7
Unfair to opposing litigant as much too low	29.9	87.0	34.3	100.0
Don't know	7.8	94.8	-	-
No response	5.2	100.00	-	-
Total	100.00	100.00	100.0	100.0

Respondents' views on compensation payments do not vary greatly according to professional background or other personal characteristics of lawyers, if compared with responses to other questions. The only exception concerns oil company lawyers, whose views differ significantly from those of the other lawyers.<sup>86</sup> It was expected that oil

<sup>86</sup>  $\chi^2 = 6.22$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.045$ .

company lawyers would be more likely to consider compensation payments as unfair to oil companies. The data partially confirms this hypothesis. Of the oil company lawyers, 13.6% consider compensation payments unfair to oil companies, compared with 1.7% of the other lawyers. Nonetheless, a clear majority of oil company lawyers - 71.6% - regard compensation payments as unfair to the opposing litigants, although this figure is smaller than the figure of 88.4% for the other lawyers (see Appendix B, Table B.25.). These results are very revealing as oil company lawyers openly agree that compensation payments paid by their clients in tort are unfair to the opposing litigants.

To sum up, this sub-section has shown that the functioning of the legal system largely favours oil companies, which manifests itself in inadequate compensation payments to opposing litigants in oil related litigation. The courts are generally biased in favour of oil companies.

#### **4.11. Legal Change and Legislation**

It is not entirely clear how the potential bias of the legal system may change over time. Our analysis so far has said little about changes in the legal system and legislation. This is the focus of this sub-section. That the legal system changes is self-evident. But legal change is by no means apparent to Nigerian lawyers. A lawyer from Lagos with 35 years of professional experience boldly pronounces: *'Our laws, especially criminal, are virtually the same since the colonialists left'*.<sup>87</sup> Such a view appears to be shared by many Nigerian lawyers, if judged by some of the respondents' comments and interviews

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<sup>87</sup> Lawyer no.74, 1998 survey of Nigerian lawyers.

with lawyers. From the respondents' comments and interviews, it emerges, moreover, that lawyers tend to associate legal change with changes in statute law rather than with the evolution of judicial precedents. For instance, lawyers who believe that there has been change in environmental law, appear to base their views mainly on the pronouncement of the Federal Environmental Protection Agency (FEPA) Act. With this background in mind, the respondents' views on legal change appear to reflect changes in legislation.

The respondents' replies are somewhat distorted because of uneven numbers of 'don't knows' and 'no responses', which range from 12.3% to 83.1% (see Table 4.28.). Excluding 'no responses', a majority of 63.2% note that there has been no change in criminal law since they were called to the Bar. A majority of respondents state that civil law, environmental law and commercial law have undergone some change, albeit not major change. Only 6.3% state that there has been major change in civil law, while 19.3% and 23.7% note that there has been major change in commercial law and environmental law respectively. Some 66.1% believe that there has been some change in civil law, while 64.4% and 57.3% believe that there has been some change in commercial law and environmental law respectively (see Table 4.29.). As indicated earlier, changes in environmental law are usually ascribed to the FEPA Act. Changes in commercial law are usually ascribed to legislative changes in laws relating to foreign investment, banking laws, company law and petroleum law. Commercial lawyers emphasise, above all, legislative de-regulation and removal of restrictions on foreign ownership of Nigerian enterprises as the major source of legal change.

**Table 4.28. Answers to question 12 'Which areas of law have undergone changes since you were called to the Bar?'**

	Major change	Some change	No change	Don't Know	No response
Criminal law	7.1	22.7	51.3	1.3	17.5
Civil law	5.2	54.5	22.7	1.3	16.2
Environmental law	20.1	48.7	16.2	5.2	9.7
Commercial law	16.9	56.5	14.3	1.9	10.4
Other	2.6	7.8	6.5	4.5	78.6

**Table 4.29. Answers to question 12 'Which areas of law have undergone changes since you were called to the Bar?' (excluding 'don't knows' and 'no responses')**

	Major change	Some change	No change
Criminal law	8.8	28.0	63.2
Civil law	6.3	66.1	27.6
Environmental law	23.7	57.3	19.1
Commercial law	19.3	64.4	16.3

It was expected that the responses on legal change would vary greatly according to age and professional experience. This hypothesis can be unequivocally rejected. Out of 10 cross-tabulations between the attributes of legal change on the one hand and age and experience on the other, no chi-square tests render significant results.

The respondents' views on legal change vary considerably according to professional background and location. The most significant deviations can be seen regarding environmental law. It was expected that environmental lawyers would be more likely to notice legal change in environmental law, a hypothesis which cannot be confirmed by the data. Somewhat surprisingly, only 16.3% of the environmental lawyers believe that environmental law has undergone major changes, compared with the figure of 33.8% for the other lawyers.<sup>88</sup> Some 67.4% believe that there has been some change,

<sup>88</sup>  $\chi^2 = 6.14$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.046$ .

which is more than the figure of 44.1% for the other lawyers (see Appendix B, Table B.26.). These results, overall, fail to confirm our hypothesis on the views of environmental lawyers. What appears from the respondents' views is that there have not been any major changes in the area of environmental law.

Lagos lawyers are more likely than Port Harcourt lawyers to believe that environmental law has undergone change.<sup>89</sup> Only 15.4% of Lagos lawyers believe that environmental law has undergone no change, while the figure for Port Harcourt lawyers is 50.0% (see Appendix B, Table B.27.). What these results indicate is that the consequences of changes to environmental law are viewed differently by different groups of lawyers but it is difficult to make more sense out of the data.

Interestingly, oil company lawyers are more likely to observe major changes in environmental law as opposed to the other lawyers.<sup>90</sup> Of those lawyers, 31.1% believe that there have been major changes in environmental law, compared with the figure of 14.0% for the other lawyers (see Appendix B, Table B.28.). These results could suggest that changes in Nigeria's environmental law have affected oil companies more than other types of organisations or individuals. But this hypothesis is put into question by the views of those lawyers who acted as counsel in a lawsuit against an oil company with regards to changes in environmental law.<sup>91</sup> Of those lawyers, 17.1% believe that there have been major changes in environmental law, compared with the figure of 34.7% for the other lawyers (see Appendix B, Table B.29.). In other words, the trends in the views of oil

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<sup>89</sup>  $\chi^2 = 10.14$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.006$ .

<sup>90</sup>  $\chi^2 = 5.30$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.071$ .

<sup>91</sup>  $\chi^2 = 6.18$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.045$ .

company lawyers and lawyers who acted in lawsuits against oil companies run counter to each other. One group is more likely to believe that there have been major changes, while the other believes the opposite. What these results suggest is that views on the degree of change in environmental law can be highly subjective depending on a lawyer's personal and professional background.<sup>92</sup>

The above discussion suggests that parts of civil law, environmental law and commercial law have undergone some change. That changes in legislation are not always implemented in Nigeria is self-evident. Respondents were asked whether five pieces of legislation affecting oil companies have, in practice, been effectively enforced or not. As with the expression 'legal change', the meaning of effective enforcement may differ considerably between lawyers. A useful test case is the Gas Re-injection Act 1979. The Act has not been effectively enforced in Nigeria in the sense that a number of its main provisions prohibiting gas flaring have not been observed (see section three of the thesis). Nonetheless, 23.4% of the respondents consider the Act partially enforced (see Table 4.30.). This may suggest that a considerable minority of respondents regard a piece of legislation as 'partially enforced', even if its main provisions are not enforced. In other words, some responses, which suggest that a piece of legislation has been 'partially enforced', may not necessarily indicate that any of the main provisions of a piece of legislation have been enforced.

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<sup>92</sup> In terms of views on change in commercial law, the results are more clear-cut and unsurprising, if compared with respondents' views on changes in environmental law. Commercial lawyers and oil company lawyers are predictably more likely to believe that commercial law has undergone major changes than other lawyers. 24.7% of the commercial lawyers believe that there have been major changes in commercial law, compared with the figure of 4.8% for the other lawyers ( $\chi^2 = 7.69$ , which clearly exceeds the critical  $\chi^2_{0.10} = 2.706$ , at d.f. = 1,  $p = 0.006$ ). 26.6% of the oil company lawyers believe that there have been major changes in commercial law, compared with the figure of 8.9% for the other lawyers ( $\chi^2 = 7.25$ , which clearly exceeds the critical  $\chi^2_{0.10} = 4.605$ , at d.f. = 2,  $p = 0.027$ ).



The respondents' replies are somewhat distorted because of uneven numbers of 'don't knows' and 'no responses', which range from 6.5% to 33.1% (see Table 4.30.). The Land Use Act emerges as the best enforced legislation out of the five pieces of legislation. Excluding 'no responses', some 34.0% of the surveyed lawyers believe that the Land Use Act has been effectively enforced, while 50.0% believe that the Land Use Act has been partially enforced. Some 18.8% state that the Petroleum Act has been effectively enforced, while 41.0% state that the Act has been partially enforced. Only an insignificant minority of respondents believe that the other pieces of legislation - the FEPA Act (1.5%), the OMPADEC Act (3.3%) and the Gas Re-injection Act (2.9%) - have been effectively enforced (see Table 4.31.). What emerges from these results is that statute law which is likely to benefit oil companies as opposed to the village communities in the oil producing areas - the Land Use Act and the Petroleum Act - is more effectively enforced than statute law which is likely to benefit communities - the FEPA Act, the OMPADEC Decree and the Gas Re-injection Act. But it is difficult to determine to what extent legislation has been implemented because of the ambiguity of the term 'partially enforced'.

**Table 4.30. Answers to question 13 'Do you think that the following piece of legislation has been effectively enforced?'**

	Effectively enforced	Partially enforced	Not enforced	Don't Know	No response
Petroleum Act 1969	14.3	31.2	30.5	13.6	10.4
FEPA Act 1988	1.3	48.1	35.7	5.8	9.1
OMPADEC Act 1992	2.6	44.8	32.5	8.4	11.7
Land Use Act 1978	31.8	46.8	14.9	1.3	5.2
Gas Re-injection Act 1979	1.9	23.4	41.6	19.5	13.6

**Table 4.31. Answers to question 13 'Do you think that the following piece of legislation has been effectively enforced?' (excluding 'don't knows' and 'no responses')**

	Effectively enforced	Partially enforced	Not enforced
Petroleum Act 1969	18.8	41.0	40.2
FEPA Act 1988	1.5	56.5	42.0
OMPADEC Decree 1992	3.3	56.1	40.7
Land Use Act 1978	34.0	50.0	16.0
Gas Re-injection Act 1979	2.9	35.0	62.1

It was expected that the responses would differ according to age and professional experience since older and more experienced lawyers could take more of a long-term view on legal change and enforcement than younger lawyers. Indeed, the views of older and more experienced lawyers tend to differ significantly from younger and less experienced lawyers. The most significant results of cross-tabulations can be detected in respect of the enforcement of the FEPA Act. The older the lawyers, the more likely they are to believe that the FEPA Act has not been enforced.<sup>93</sup> Of the lawyers aged 46 years and over, 75.0% state that the FEPA Act has not been enforced, while only 30.4% of the lawyers aged between 25 and 30 years old note that the FEPA Act has not been enforced (see Appendix B, Table B.30.). As with age, the more experienced the lawyers, the more likely they are to believe that the FEPA Act has not been enforced.<sup>94</sup> Of the lawyers with 1 to 5 years of professional experience, 47.6% believe that the FEPA Act has not been enforced, compared with the figure of 61.5% for the lawyers with 21 and more years of professional experience (see Appendix B, Table B.31.). While the trend is not entirely consistent, one can convincingly argue that older and more experienced lawyers are more

<sup>93</sup>  $\chi^2 = 29.50$ , which clearly exceeds the critical  $\chi^2_{0.10} = 7.779$ , at d.f. = 4,  $p = 0.000006$ .

<sup>94</sup>  $\chi^2 = 14.37$ , which clearly exceeds the critical  $\chi^2_{0.10} = 7.779$ , at d.f. = 4,  $p = 0.006$ .

likely to state that legislation has not been enforced in Nigeria. If it is assumed that older and more experienced lawyers are in a better position to comment on the enforcement of legislation, it can be argued with more conviction that Nigerian legislation is generally unenforced in practice.

An interpretation of the responses on the enforcement of legislation is made complicated by the fact that a particular piece of legislation may contain some provisions which are enforced and some which are not. The Petroleum Act, for instance, comprises commercial provisions as well as environmental provisions for oil operations. It was hoped that an analysis of the views of environmental lawyers and commercial lawyers would provide some indication as to which specific provisions have been enforced and which have not.

The responses of environmental lawyers are most interesting because their views differ from those of the other lawyers on almost all questions regarding enforcement, except for the question on the enforcement of the Gas Re-injection Act.<sup>95</sup> The views of environmental lawyers are particularly interesting on the enforcement of the Petroleum Act and the FEPA Act, both of which include explicit legal provisions for environmental protection. Of the environmental lawyers, 47.4% and 47.6% state that the Petroleum Act and the FEPA Act have not been enforced respectively, compared with figures of 26.2% and 27.5% for the other lawyers respectively (see Appendix B, Table B.32.). The views

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<sup>95</sup> In cross-tabulations, in which the responses of environmental lawyers vary from the rest, the p value varies from  $p = 0.052$  to  $p = 0.005$ , that means, all results are highly significant at  $\alpha = 0.10$ . The chi-square and p values for cross-tabulations between the attribute of environmental lawyer and attributes of obstacles of access to courts are as follows:

- for views on the Petroleum Act:  $\chi^2 = 6.44$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.040$ ;
- for views on the FEPA Act:  $\chi^2 = 3.78$ , which exceeds the critical  $\chi^2_{0.10} = 2.706$  at d.f. = 1,  $p = 0.052$ ;
- for views on the OMPADEC Decree:  $\chi^2 = 4.92$ , which exceeds the critical  $\chi^2_{0.10} = 2.706$  at d.f. = 1,  $p = 0.027$ ;
- for views on the Land Use Act:  $\chi^2 = 10.45$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.005$ .

of environmental lawyers may suggest that Nigerian statutory provisions on the environment are less likely to be enforced than other types of legislative provisions.

The views of commercial lawyers differ from those of the other lawyers only on the enforcement of the FEPA Act.<sup>96</sup> Interestingly, commercial lawyers are more likely than the other lawyers to state that the FEPA Act has not been enforced at all. Of the commercial lawyers, 39.6% state that the FEPA Act has not been enforced, compared with the figure of 15.0% for the other lawyers (see Appendix B, Table B.33.). It is difficult to speculate on the meaning of these results but the respondents' views may suggest that the FEPA Act had relatively little impact on the business operations of their clients.

With regards to the enforcement of land legislation, oil company lawyers are more likely to believe that the Land Use Act has been effectively enforced than the other lawyers.<sup>97</sup> Of the oil company lawyers, 36.6% note that the Land Use Act has been effectively enforced, compared with the figure of 30.6% for the other lawyers. Only 9.8% of the oil company lawyers state that the Land Use Act has not been enforced, compared with the figure of 24.2% for the other lawyers (see Appendix B, Table B.34.). Lawyers who acted in a lawsuit against an oil company are less likely to believe that the Land Use Act has been effectively enforced than the other lawyers.<sup>98</sup> Of the lawyers who acted in a lawsuit against an oil company, 26.9% state that the Land Use Act has been effectively enforced, compared with the figure of 47.1% for the other lawyers. Of those lawyers,

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<sup>96</sup>  $\chi^2 = 3.33$ , which exceeds the critical  $\chi^2_{0.10} = 2.706$  at d.f. = 1,  $p = 0.068$ .

<sup>97</sup>  $\chi^2 = 5.48$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.064$ .

<sup>98</sup>  $\chi^2 = 6.05$ , which exceeds the critical  $\chi^2_{0.10} = 4.605$  at d.f. = 2,  $p = 0.049$ .

18.3% note that the Land Use Act has not been enforced, compared with the figure of 11.8% for the other lawyers (see Appendix B, Table B.35.). A simple explanation for these results may be that the Land Use Act had a different impact on oil companies, on the one hand, and on the opposing litigants from the village communities, on the other. On the one hand, the Land Use Act made it easier for oil companies to compulsorily obtain land in village communities for oil operations (see section three of the thesis). This may explain why oil company lawyers are more likely to believe that the Land Use Act has been effectively enforced. On the other hand, the Land Use Act has not, overall, changed the communal and family ownership structures and the traditional way in which land is being allocated in the oil producing areas (see section three of the thesis). This may explain why lawyers who acted in a lawsuit against an oil company are less likely to believe that the Land Use Act has been effectively enforced.

To sum up, this sub-section has shown that there has been relatively little change in Nigerian statute law. There are severe problems of enforcement of legislation in Nigeria. Various questions remain largely unanswered on the question of enforcement and legal change, particularly on the nature of legal change in case law.

## **Conclusion**

### **4.12. Conclusion**

This core section of the thesis discussed impediments to the functioning of the legal process and the judiciary with a focus on the problems of access to courts. We

intended to describe the constraints and opportunities that are faced by a litigant in an oil related case. This topic was approached through a survey of Nigerian legal practitioners. The survey represented a significant pool of expert knowledge on oil industry activities and oil related litigation. As such it served as a window to an understanding of legal conflicts between oil companies and village communities in Nigeria, the main focus of the thesis.

Our analysis was motivated by the perception of a gap in the literature on African legal systems. This gap arises not so much in terms of an analysis of the substantive elements of African law, but rather in terms of the day-to-day operations of the legal system. This problem is particularly significant in the context of legal disputes between multinational companies and the local populace in developing countries. Legal studies on Africa have hitherto largely ignored the socio-legal context of law such as the problems of access to courts for potential litigants or the actual enforcement of legislation on the ground. They have largely confined their analyses to the formal legal process and/or the analysis of sources of law. In its modest way, this survey has sought to shed light on the legal processes associated with the interaction between village communities and oil multinationals. We believe that the survey has helped in the understanding of some of the key obstacles village communities encounter when seeking legal recourse for oil related damage.

Previous scholars who have undertaken socio-legal studies on Africa have largely confined their analyses to qualitative, often speculative, evidence. Degni-Segui, who served as the starting point of our analysis of the barriers to justice, based his study

mainly on secondary sources. At the outset of his study, he stated that there are five main barriers to justice: geographical distance to courts, delay in the disposal of cases, lack of funds, African political systems and ignorance of legal rights. Unfortunately, he has failed to provide evidence of why we should regard those specific factors as more important than other potential causes. Ultimately, his assessment of the hierarchy of the problems of access to courts hence appears speculative. We have attempted to quantify the hierarchy of access problems as perceived by Nigerian legal practitioners. In this context, we were able to show that the geographical distance to courts, which features among the key problems of access to courts cited by Degni-Segui, is not a particularly severe barrier to justice. We believe that our quantitative analysis offers many advantages if compared with the existing qualitative studies.

As previously stated, the main theme of this section of the thesis was access to courts for potential litigants. The results indicated that access to courts is a major obstacle in the functioning of Nigeria's legal system. The two main problems of access to courts were identified as the potential plaintiffs' lack of financial resources and their ignorance of general education and legal rights. The lack of funds was considered a very important obstacle by 75.3% of the lawyers and an important obstacle by 13.6%. The lack of general education and ignorance of legal rights were regarded as very important problems by 57.1% and 51.3% respectively, and were regarded as important problems by 24.7% and 37.7% respectively. The other main obstacles named by the respondents included delay in the disposal of cases, intimidation by public bodies, intimidation by tortfeasors and uncertainty about the potential success of a suit. The significance of the lack



of funds as the key barrier to justice could be expected since the scope of Nigeria's legal aid scheme is largely limited to criminal cases. This prevents potential low income plaintiffs from instituting lawsuits in most civil cases. Access to contingency fees meanwhile may be limited due to the significant cost of expert witnesses and the financial risk faced by legal practitioners.

An analysis of the constraints in the functioning of the judiciary and the court system formed the second main theme in the discussion of the survey results. The data indicated that the Nigerian judiciary and the court system face severe problems in their day-to-day operations. Of all respondents, 89.6% stated that the judiciary is too dependent on the executive arm of the government, 74.7% declared that the appointment of judges is too arbitrary and 89.6% stated that the funding of the legal system is too little. Some 90.2% considered congestion in the courts too high. The respondents were of the view that the Nigerian judiciary is frequently under serious extra-judicial pressures from public and private bodies. Of all respondents, 50.0% noted that judges, lawyers and other judicial officers encounter pressures from public or private institutions very often or often. A further 44.8% noted that pressures exist sometimes. Extra-judicial pressures from the government can result in the non-enforcement of court orders in those cases, in which the government has an interest. Of all respondents, 55.2% stated that there are severe or very severe problems in the enforcement of court orders in Nigeria. A further 40.9% declared that there are some difficulties. A number of the problems noted in the context of the functioning of the judiciary, notably high congestion in the courts, further compound the obstacles of access to courts faced by potential litigants in Nigeria.

A discussion of the problems of access to courts and the functioning of the court system, which formed the initial part of the survey analysis, was followed by secondary survey results, which fell into three themes. First, we discussed the distinctions in the competency of judicial services in different courts in Nigeria. The data suggested that there are marked differences with the Supreme Court and the Court of Appeal being rated as the most competent Nigerian courts. Of all respondents, 85.7% believed that there are major differences in the quality of judicial services in different Nigerian courts. Of all surveyed lawyers, 38.3% and 50.6% considered the Supreme Court very competent and competent respectively. The other Nigerian courts were considered less competent.

Second, we explored in greater detail the lawyers' perceptions of the conduct of oil companies and courts in oil related litigation. The data indicated that lawyers do not perceive unfair treatment of litigants in oil related cases by the courts as the norm, albeit litigants may be treated unfairly in specific cases. But there appear to exist numerous instances, in which oil companies do not conduct themselves ethically in court proceedings, and courts are regarded as biased in favour of oil companies. Roughly 50.0% of the respondents noted that courts are biased in favour of oil companies, while only 16.8% declared that courts are biased in favour of opposing litigants.

Third, legal change and legislation were discussed. It emerged that most lawyers perceive the legal changes that occurred in Nigeria as minor. There were strong indications that statute law which is likely to benefit oil companies as opposed to the village communities in the oil producing areas such as the Land Use Act is more

effectively enforced than legislation which is likely to benefit communities such as the FEPA Act.

On the whole, the data suggests that the inadequacies in the actual-practical operations of the legal system are not peculiar to oil related court cases or cases involving the interests of the government and the ruling elite. The survey results have indicated that the Nigerian legal system has many deficiencies in terms of its day-to-day operations. There are severe problems of access to courts for potential litigants in any type of litigation, including lack of funds and the ignorance of potential litigants. The functioning of the judiciary is also heavily constrained by the lack of funds and extra-judicial pressures. Given the inadequacy of the legal system, any litigant, including litigants against the oil companies, may find it difficult to pursue a court case in a Nigerian court. It could be argued that Nigeria as a developing country still faces the problem of establishing efficient bureaucratic state structures (see sections two and three of the thesis). One could then also argue that the legal system suffers problems of bureaucratic inefficiency. Nonetheless, our survey has indicated that the specific difficulties of village communities, who sue oil companies, are of a different scale than the difficulties faced by other potential plaintiffs.

Chi-square tests of independence have revealed marked differences in the lawyers' views on the legal system across various sub-groups of respondents.<sup>99</sup> An analysis of the

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<sup>99</sup> Of all cross-tabulations between the personal characteristics of respondents and questions on the legal system, professional background plays the crucial role in shaping lawyers' views. The views of environmental lawyers and commercial lawyers deviate most from those of the other lawyers. These results suggest that environmental and commercial lawyers may often encounter different sets of problems in dealing with the legal system than the other lawyers. As previously stated, the views of the oil company lawyers helped to denote specific differences between oil related litigation and other types of litigation. The views of the environmental lawyers helped to indicate differences between general oil related litigation (which could include e.g. employment cases) and litigation involving compensation claims for environmental damage. Somewhat surprisingly, the size of a law firm is also an important determinant of lawyers' views, although in most cases it could not be discerned in what way the size

differences between oil related litigation and other types of litigation suggested that, in the view of the respondent lawyers, litigants are less likely to succeed in oil related cases than in other types of litigation. A significant part of the data indicated that the problems of access to courts are greater in oil related litigation. Of all respondents (excluding 'no responses' and 'don't knows'), 48.9% stated that the problems of access to courts are more severe in oil related litigation than in other types of litigation. Of the lawyers with previous oil industry contacts, 73.3% pronounced that they have met potential litigants who have been discouraged from pursuing a valid legal claim in court at least sometimes if not often, compared with the figure of 35.7% for the other lawyers. As in other types of litigation, the lack of funds and ignorance were rated as the main problems of access to courts in oil related cases. Judging by the views of environmental lawyers, it could be assumed that the lack of general education and intimidation by the government as well as oil companies are more important barriers to justice for village communities suing oil companies than they are for other potential litigants.

The deficiencies in the day-to-day operations of the judiciary and the legal process also appear to be greater in oil related litigation. Survey analysis indicated that the judiciary and the legal process are more biased in favour of oil companies rather than the opposing litigants and that judges encounter greater outside pressures in oil related litigation. This bias manifests itself, for instance, in the award of compensation payments by Nigerian courts. A majority of legal practitioners regarded compensation payments in

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of law firms determines lawyers' views. Somewhat surprisingly, contact with the oil industry does not appear to greatly influence the views of lawyers (see Appendix B, Table B.36.). It must be concluded that mere contact with oil companies does not change a lawyer's views on the legal system, whereas work for an oil company or specialisation in environmental law is far more likely to alter a lawyer's views.

oil related cases as more biased in favour of oil companies. Of all respondents (excluding 'don't knows' and 'no responses'), 79.1% stated that the compensation paid by oil companies for damages in tort is unfair to the opposing litigant.

These findings support the initial hypothesis that the Nigerian legal system as a whole, not merely statute law and the structural character of the legal system, favours the interests of oil companies. While it is obvious that the Nigerian legal process is predisposed in favour of oil companies, it is less obvious which types of oil related litigation are more affected. Nonetheless, the responses of environmental lawyers appear to suggest that the impediments to the exercise of justice are particularly severe in oil related cases involving compensation claims for environmental damage. The greater part of environmental litigation in the oil industry involves compensation claims filed by members of village communities. By implication, it has to be assumed that the legal process is particularly predisposed in favour of oil interests in litigation between oil companies and village communities.

The analysis in this section of the thesis has identified the constraints and opportunities faced by litigants in oil related litigation. This sets the stage for the discussion of the dynamics of oil related litigation in the consecutive sections of the thesis.

## **Section 5: Environmental and Social Impact of Oil Operations on Village Communities**

### **5.1. Introduction**

Oil operations on the ground in Nigeria cause a number of externalities which affect the well-being and property of village communities. These externalities are a source of conflicts between oil companies and village communities. This section of the thesis analyses the nature of these externalities. We focus our analysis on the impact of oil exploration and production on village communities including the resulting environmental damage. The issues discussed include seismic surveys, construction of roads and oil spills. Furthermore, we discuss land conflicts which arise from land acquisition for oil operations. We illustrate the impact of oil operations by using exemplary court judgments from Nigerian courts. These court judgments provide examples of specific instances, in which village communities were adversely affected by oil operations.

The goal of this section of the thesis is not to address comprehensively the correlates of the conflicts between village communities and oil companies such as economic inequality or the lack of political opportunities but rather to use the factual evidence from court cases to illustrate how the adverse effects of oil operations can be a source of conflicts between oil companies and village communities. The data presented in this section of the thesis suggests that oil operations are frequently carried out in a careless manner, which causes substantial adverse effects in village communities. These adverse effects may have caused conflicts between companies and communities or

amplified existing conflicts. Some of these conflicts are likely to result in litigation against oil companies, others may result in informal negotiations and others may result in violent protest.

As previously stated, our analysis centres around the discussion of exemplary court judgments from Nigerian courts. Rather than using court cases as legal material, we use them as factual evidence of the impact of oil operations on village communities. Since Nigerian courts produce a substantial quantity of written records on those conflicts, court cases provide a significant number of references to particular events and disputes. If compared with an analysis of court judgments, one of the alternative methodologies would be to conduct a sociological field study. But data gained from field studies can be very subjective as the number of objects of study may be highly limited, unless a standardised survey is used, a strategy which is difficult in a village setting in Nigeria.<sup>1</sup> Data gained from court judgments is perhaps less subjective because judges are obliged to weigh the evidence of one party against that of the other party.

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<sup>1</sup> A recent study by Omoweh (1998) exemplifies some of the methodological pitfalls involved in conducting field studies. Being influenced by the subjective perceptions of villagers, Omoweh concluded that oil companies, particularly Shell, have caused a land scarcity crisis in Nigeria's oil producing areas. This view is mistaken as studies with a scientific approach have shown that there are more significant causes of the land crisis, particularly erosion and population growth (Ashton-Jones 1998, World Bank 1995 and 1990). A study by Onyige (1979) exemplified the same methodological problem. Being influenced by the subjective perceptions of villagers, Onyige (1979, 166 and 172-173) concluded that reduced crop yields of farmers and fishing losses were due to oil operations. Like Omoweh, he likewise failed to investigate other possible causes of these problems.



**Table 5.1. Human activities in the Niger Delta**

Ecozone	Approximate Area (in sq km)	Major Human Activities
Lowland Equatorial Monsoon	7,400	<ul style="list-style-type: none"><li>• Oil operations and infrastructure</li><li>• Arable agriculture</li><li>• Oil palm and rubber exploitation</li><li>• Urban and industrial activities</li></ul>
Freshwater	11,700	<ul style="list-style-type: none"><li>• Oil operations and infrastructure</li><li>• Traditional forest exploitation</li><li>• Modern forestry</li><li>• Raffia and oil palm exploitation</li><li>• Rice and arable agriculture</li><li>• Fishing</li></ul>
Brackish Water	5,400	<ul style="list-style-type: none"><li>• Oil operations and infrastructure</li><li>• Traditional mangrove exploitation</li><li>• Port and associated activities</li></ul>
Sand Barrier Islands	1,140	<ul style="list-style-type: none"><li>• Oil operations and infrastructure</li><li>• Fishing</li><li>• Raffia and oil palm exploitation</li></ul>

Source: adapted from Ashton-Jones (1998, 116).

The key problem in using court cases as a source of factual evidence is that courts rely on the interpretations presented by legal counsel and witnesses in court. In this context, one of the main obstacles faced by courts is to establish the processes which have resulted in oil related environmental damage. Environmental damage in the oil producing areas originates from multiple activities. The oil industry is only one of a number of human activities in oil producing areas. In the Niger Delta, an area of approximately 25,640 sq km of wetlands where the bulk of oil operations take place, other major human activities include farming, fishing and forestry. All these activities may cause adverse environmental and social effects on village communities in the oil producing areas (see Table 5.1.).<sup>2</sup> As the World Bank (1995, 102) has shown, the Niger

<sup>2</sup> Since the physical environment of the Niger Delta is dominated by the presence of water, it is instructive to indicate the sources of water pollution. Apart from oil pollution, water can also be polluted as a result of domestic sewage and other organic waste, infectious disease bacteria, fertiliser residues, pesticides and insecticides, industrial effluents, eroded sediments and other solid waste. Since there are no effective local pollution controls, sewage and other organic waste are probably the greatest sources of water pollution. The most significant consequence of water pollution is the lack of decent drinking water in many areas, which results in illness and death from water-borne diseases such as diarrhoea, cholera and typhoid. Fishing, the main economic activity for many people in the Niger Delta, has been affected by environmental damage and over-fishing, with many

Delta faces many significant environmental problems including coastal and riverbank erosion, agricultural land degradation, forest degradation and biodiversity loss. A number of these environmental problems also have social consequences, for instance, agricultural land degradation leads to lower crop yields and, as a result, renders farming more difficult. At least some of these social and environmental problems would be likely to prevail without the existence of the oil industry. Considering the multiple causes of environmental and social damage, it may be difficult to establish scientifically whether a specific adverse activity was caused by oil operations or not. For example, soil degradation may result from overfarming or from oil operations. By implication, a judge may find it difficult to decide on technical points arising out of oil related litigation. While establishing causality may be an important problem, a judge is, nonetheless, obliged to admit the most credible factual evidence. On the balance of probabilities, factual information derived from litigation can hence yield potentially high returns. The key advantage in using evidence from court judgments is the reliability of Nigerian typed transcripts as a source of factual information.<sup>3</sup>

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fishermen suffering from declining catches (Ashton-Jones 1998, chapter 11). The above brief discussion indicates that oil operations are part of larger problems in oil producing areas.

<sup>3</sup> In the 1998 survey of legal practitioners, respondents were asked whether typed transcripts of court judgements in Nigeria are usually written competently. Excluding 'no responses', a majority of the surveyed lawyers - 52.9% - noted that typed transcripts of court judgements are usually written competently, while 29.4% disagreed and 17.6% neither agreed nor disagreed (see columns 3 and 4, Table on the bottom of the next page). Since a significant minority of lawyers has doubts about the reliability of typed transcripts, one needs to exercise some caution when interpreting typed court judgements. Nonetheless, our results would suggest that typed transcripts of court judgements can generally be utilised as reliable primary evidence of court proceedings. In Nigerian court procedure, while the judge does not type the transcripts himself, he must (at least in theory) proof-read each typed transcript to ensure that the transcript contains no mistakes before appending his signature. This ensures an adequate standard of the transcripts. On the whole, typed transcripts are likely to provide a more reliable source of information than alternative methodologies.

## 5.2. Mechanics of Oil Operations in Village Communities

Before we analyse evidence from court cases, it is instructive to explain the mechanics of oil operations in village communities. This serves as a background to the subsequent analysis of court cases.

Oil companies affect village communities through their exploration and production activities. In contrast, marketing and refining takes place in urban areas, so it can be entirely disregarded here. Exploration operations in rural areas include seismic studies and drilling. Production operations include transportation of oil through pipelines and gas flaring. In addition, construction of pipelines and oil installations takes place.

On the most basic level, exploration for oil aims at locating sites with geological structures in which oil might be trapped. Exploration is mainly carried out by three

**Table: Answer to survey question 15 'Do you agree/disagree with the following statement? „Typed transcripts of court judgements are usually written competently” ’**

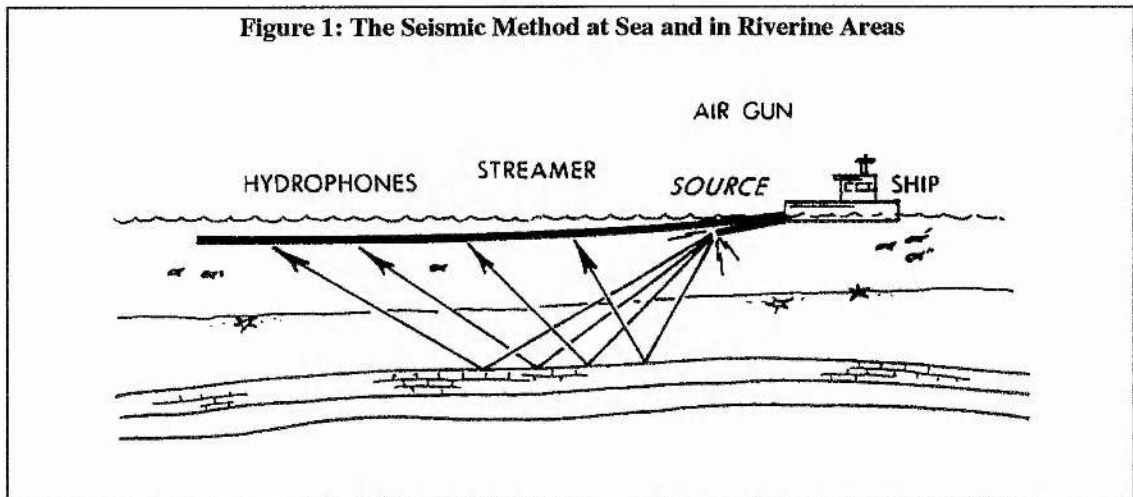
	1	2	3	4
	Percentage of respondents	Cumulative percentage	Percentage of respondents (excl. 'no responses')	Cumulative percentage (excl. 'no responses')
Strongly disagree	20.8	20.8	23.5	23.5
Disagree	5.2	26.0	5.9	29.4
Neither	15.6	41.6	17.6	47.0
agree/disagree				
Agree	18.8	60.4	21.3	68.3
Strongly agree	27.9	88.3	31.6	99.9
No response	11.7	100.0	-	-
Total	100.0	100.0	99.9	99.9

methods: analysis of existing geological and other information, seismic surveys and exploration drilling. The first step for the survey team is to study geological as well as geochemical information and to prepare detailed maps, sometimes accompanied by aerial photographic surveys. Geologists study rock outcrops and analyse rock specimens and fossils in order to obtain clues about their origins and ages (Hyne 1995, 221-232). These activities involve little or no contact with village communities.

Seismic surveys are intended to gather geophysical information for the oil companies. In a seismic survey, sound waves are sent into the earth's crust where they are reflected by the different rock layers. The sound energy from a source on the surface bounces off the different rock layers and returns to the surface where it is recorded by a detector. Surveys are carried out by seismic crews, which are usually sub-contractors of oil companies. The seismic crew measures the time taken for the wave to return to the surface, which reveals the depth of the layers. Such surveys also indicate what types of rock lie beneath the surface, since different rocks transmit sound at different rates (Hyne 1995, 233-254).

A seismic survey starts by '*line cutting*', that is, clearing the land or water surface from any plants in preparation for the survey. In Nigeria, a line is usually at least one meter in width. The cutting of plants is almost exclusively done by hand, using machetes. After completion of the lines, the seismic survey can start. Most surveys on land in Nigeria use explosives as the energy source. Explosives are detonated a few metres below the ground surface. In riverine areas, small boats or barges are used for seismic surveys, equipped with airguns which release compressed air into the water surface. The airgun is

towed in the water behind the boat. The returning reflections are recorded on detectors contained in plastic tubes called streamers behind the boat (see Figure 1). From the 1980s, oil companies have increasingly used the so-called 3-D seismic survey as opposed to the 2-D survey used in the past.



Source: Hyne (1995, 243).

A 3-D survey provides the oil company with a three-dimensional seismic image of the subsurface. On land, many seismic cables are laid close to each other to form a grid pattern, so that maximum information can be obtained from the surveyed area. In riverine areas, a single boat has two arrays of air guns being towed behind. The information is later processed in a high-speed computer. The subsurface can be viewed on a computer from different directions which allows a more accurate geophysical assessment than in a 2-D survey (Hyne 1995, 251-252).

3-D surveys were first employed by Shell in 1986 and have almost entirely replaced 2-D surveys in Shell's operations since (van Dessel 1995, 14-15). By the late

1990s, 3-D surveys played a much bigger role than 2-D surveys. Shell was the most active oil company conducting seismic surveys in 1997, while Western Geophysical was the most important seismic contractor in Nigeria (see Appendix D, Table D.10.).

Seismic surveys bring oil companies into close contact with village communities. '*Line cutting*' requires a large number of workers to intrude on communal lands. 3-D surveys are particularly labour-intensive. In Nigeria, seismic crews usually carry all equipment by hand so a single 3-D crew can include over 1,000 people (van Dessel 1995, 14-15). Improved technology resulted in greater contact with village communities as oil companies sometimes used 3-D surveys in areas previously surveyed with the assistance of 2-D techniques because 3-D surveys provide more reliable data. In other words, the introduction of 3-D surveys has increased the physical presence of oil companies in village communities.

Following seismic surveys, drilling of exploration wells begins by clearing the vegetation and building access roads and canals. Clearing of land is usually done by hand just as for seismic surveys. In riverine areas, canals are dredged to enable the company access to the well site. On land, an access road to the well site is constructed. Wells are drilled with rotary cutting tools with tough metal or diamond teeth that can bore through the hardest rock. These tools are suspended on a drilling string. During drilling operations, information about the oil field at various depths is collected by examining drill cuttings which are returned to the surface. The information about the rocks at various depths is recorded as a so-called 'sample' or 'lithographic log'. Drilling is the only way to exactly determine whether there is oil under the surface. If there is no oil in commercial

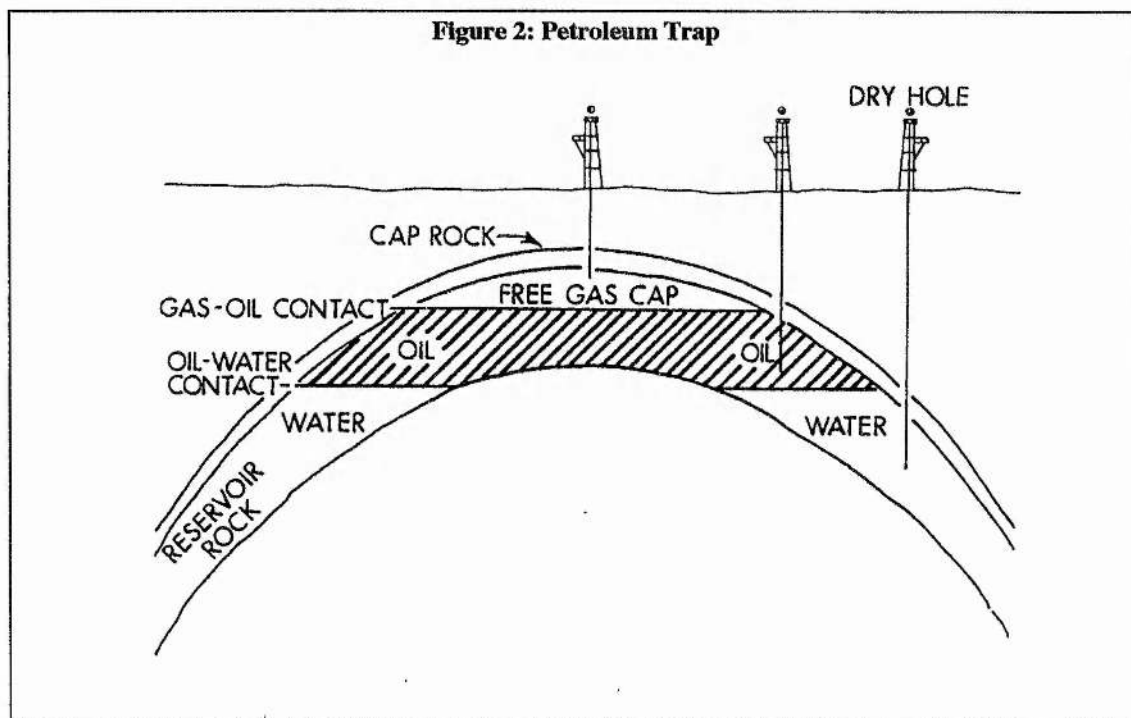
quantity, this so-called '*dry hole*' is plugged and abandoned. If oil is discovered in the exploration well, so-called appraisal wells are drilled in the area in order to establish the size of the field. If the field is to be commercially exploited, some of these appraisal wells may later be used as development wells for oil production (Hyne 1995, 255-389).

Drilling information is much more precise than that taken from a seismic survey, but drilling costs are substantial which limits the quantity of drilling. For instance, in 1997 only 49 wells were drilled in Nigeria, of which 32 were situated in Nigeria's continental shelf areas (Petroconsultants 1998, 38-39). Recently, Mobil has been the most active oil company in drilling, with 14 exploration and appraisal wells drilled in 1997. Indigenous oil companies such as Consolidated Oil are also becoming increasingly active in drilling (see Appendix D, Table D.11.). In general, thousands of wells have been drilled in Nigeria up to today. For instance, 1,300 wells were drilled by 1995 in Shell's Eastern Division alone, of which about half were still producing (van Dessel 1995, 16). Drilling activities involve a substantial number of oil workers using specialised drilling equipment, boats, road vehicles and helicopters. During these activities, company staff mainly meet with village communities during well site preparation. Dredging and road construction tends to infringe on communal lands.

Once the production stage starts, an oil/gas/water mixture flows to the surface. Oil companies cannot merely pump oil because gas and water are located in a petroleum trap together with the oil (see Figure 2). Gas flows to the surface by itself because it is very light. Oil can also flow to the surface by itself if there is enough pressure in the reservoir, which is common in Nigeria. If there is not enough reservoir pressure, oil can



be brought to the surface artificially by pumps or other methods. Once the natural reservoir drive has finished, water is injected into the earth's crust to force some of the remaining oil to flow to the surface (Hyne 1995, 8-10). Out of 1,793 producing oil wells in Nigeria in 1996, oil was flowing to the surface in 1404 wells, while only 389 oil wells required an artificial lift (*OPEC Annual Statistical Bulletin* 1997, 42). From the well head on the surface, the oil/gas/water mixture is transported through a pipeline called a flowline to a gathering station called a flowstation. A flowstation usually gathers oil from a number of different wells. There, gas and liquids are separated. In Nigeria, most of the gas is flared, mainly in a horizontal flare laid on the ground close to the flowstation (van Dessel 1995, 17).



Source: Hyne (1995, 3).

The remaining oil/water mixture is transported from a flowstation through a pipeline to an export terminal on the coast where crude oil and water are separated. At the terminal, the crude oil is loaded onto tankers and shipped abroad.<sup>4</sup> Terminals have a strategic importance for oil companies. For instance, Shell alone operated 86 flowstations in Nigeria in 1995 (SPDC 1995), but there were just over 20 oil loading terminals in the whole of Nigeria. All terminals are situated in the south-east of Nigeria, with the closest being 220 km from Lagos and the furthest being 650 km from Lagos. The largest storage capacities were available to Shell (approx. 13 million barrels) and Mobil (over 6.5 million barrels) (see Appendix D, Table D.12.).

The operation of a terminal is more important than that of a single flowstation. If the functioning of a flowstation is disturbed, only the production from the connected wells will be stopped. If a terminal is disturbed, oil export from all flowstations in the region may be stopped. When Biafra pulled out of the Nigerian Federation in 1967 at the beginning of the Civil War, Shell's flowstations were located on both sides of the new border. However, Shell could not export any oil because the Bonny terminal was blockaded by the Biafran government (Forsyth 1969, 169). Unlike today, Shell had only one export terminal in 1967 and all Shell flowstations were connected through pipelines to Bonny. Even though there are many more export terminals today than thirty years ago, they are still the weakest point of the oil infrastructure and can suffer the most from political instability such as village community protests and from technical faults. When the main loading pipeline of the Qua Iboe terminal was damaged in June 1995, all exports

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<sup>4</sup> A small percentage of crude oil is transported to Nigerian refineries and utilised within the country.

from the terminal were halted and Mobil's oil production was cut to half of the normal production rate of 330,000 barrels/day (*Platt's Oilgram News*, 15 June 1995). This exemplified the importance of terminals for oil production.

The construction of permanent production facilities such as terminals and flowstations infringes on village communities because it involves large-scale construction work. The construction of flowstations infringes on village communities to a larger extent than the construction of terminals because their number is significantly greater. In any case, the above discussion suggests that the social interactions between oil companies and village communities are likely to be high. Whether those interactions translate into adverse environmental or social effects on village communities is the topic of the following two sub-sections.

### **5.3. Impact of Oil Exploration on Village Communities**

That oil operations such as the construction of flowstations have had an adverse impact on the environment and village communities is perhaps self-evident. The adverse effect of oil operations has been documented in great detail by van Dessel, Shell's former head of environmental studies in Nigeria. According to van Dessel, the most serious environmental damage of oil exploration and production activities is caused by: oil spills, gas flares, oily and other waste, land take and production/drainage of water.<sup>5</sup> The most serious damage occurs during oil production, but much environmental damage is also done by exploration, particularly if seismic surveys are carried out. Exploration activities

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<sup>5</sup> J.P. van Dessel had resigned from Shell in protest at the company's environmental record in Nigeria. His insights on Shell's environmental record were described in van Dessel (1995).

are usually temporary but can still be highly damaging. A seismic crew may only stay in an area for a few days but the resulting damage may have long-lasting effects.

As explained earlier, significant areas of land are cleared in the process of laying seismic lines. In some areas such as farmland and uncultivated bush areas, the effect of line cutting is rather insignificant and little evidence of seismic lines is left after one year. In other areas, however, line cutting leaves long-term damage. The environmental impact of line cutting is particularly significant in mangrove swamps. It takes two to three years for mangrove bushes to recover after their roots are cut into, and it may take 30 years or more for mangrove trees to fully recover from line cutting. According to Shell's figures, 56.4 sq km out of 91.4 sq km of land cleared in the company's Eastern Division by 1995 was in mangrove areas (van Dessel 1995, 15). Detonation of explosives can affect the soil structure. If the holes for explosives are improperly drilled, a detonation can cause a crater. The environmental impact of seismic surveys in riverine areas is mostly restricted to seamammals. The release of chemicals during a seismic survey is thought to be rather insignificant. The long-term ecological effects of surveys are largely unexplored. Some of the social effects of surveys, particularly losses to property, are meanwhile visible.

In order to illustrate the impact of oil exploration on village communities, we have selected a number of Nigerian court judgments. The issues discussed include the impact of seismic surveys, damage from an oil waste pit and the construction of access roads to oil installations.

There have been a number of court cases pleading damage from seismic surveys in Nigeria from the early days of oil operations. In general, it is difficult to prove a direct

link between a seismic survey and the particular damage. For instance, in *Shell-BP v. Usoro*<sup>6</sup> in 1960, Akpan Usoro sued Shell-BP for damage resulting from detonating explosives. Shell-BP came to Usoro's village to carry out a seismic survey and detonated explosives twenty yards from Usoro's unfinished building. The plaintiff claimed that the company did not warn him beforehand and that the explosion resulted in cracks in the building. The company did not dispute the fact that the explosion was carried out only twenty yards away from the building. But they denied that the seismic survey damaged the building. The company claimed that Usoro permitted the company staff to detonate explosives twenty yards away from his building. In addition, they claimed that the cement blocks of the house were of rather poor quality and that the cracks in the building existed before the explosion. The issue at the trial was for the plaintiff to prove that damage originated from oil company operations rather than from other activities. The plaintiff seemed to have a good case. Even witnesses called by Shell-BP appeared to support his case. The company called a civil engineer in the Public Works Department as a witness who testified that there were two types of cracks in the building. Some cracks could be ascribed to the poor quality of the cement blocks, but other cracks could have been caused by an explosion. He concluded: *'If I were building I would not permit an explosion as near as that'*. Another witness for the company, a so-called *'shooter'* employed by Shell-BP, testified that he found *'two new cracks'* after the *'shooting'*. Judging by the evidence, the High Court of the Eastern Region in Calabar awarded the plaintiffs £644 and 5 shillings in damages. However, dissatisfied with the judgment, Shell-BP appealed against the decision to the Nigerian Supreme Court. The higher court

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<sup>6</sup> [1960] SCNLR.

concluded that the evidence was not conclusive enough and ordered a re-trial of the case. The case indicates the difficulties that villagers encounter in trying to prove damage caused by seismic surveys.

The damage from seismic operations is not restricted to buildings. In *Seismograph Service v. Mark*<sup>7</sup>, the plaintiff claimed compensation for the destruction of his fishing nets by a seismic boat. Seismograph Services was carrying out a seismic survey as Shell's sub-contractor in the area. The plaintiff, a fisherman, claimed that he set his fishing nets in a fishing port with net floaters and buoys attached to warn approaching boats. A vessel called M.V. Verina, belonging to the seismic party, tore through the nets and damaged them, some parts were lost and others were dragged away by the vessel. The plaintiff won in the High Court of Ikot/Abasi, but Seismograph Services appealed against the decision to the Court of Appeal. Among other defences employed, the company claimed that seismic operations were not carried out on 20 February 1988 as the plaintiff alleged but on 21 February 1988. It was impossible for the plaintiff to prove the contrary. It was also impossible for the plaintiff to show that the company acted negligently by, for example, the vessel moving too fast.<sup>8</sup> As a result, the Court of Appeal allowed the company's appeal and dismissed the case.

Even where a judge visited the site of a seismic survey, evidence of damage could not always be established. In *Seismograph Service v. Onokpasa*<sup>9</sup>, the plaintiff claimed compensation for damage from the destruction of buildings as a result of seismic

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<sup>7</sup> [1993] 7 NWLR.

<sup>8</sup> The legal basis of negligence claims is discussed in the subsequent section of the thesis.

<sup>9</sup> (1972) All N.L.R.

operations. The plaintiff Benedict Etedjere Onokpasa claimed that detonations during a seismic survey heavily damaged eight college buildings, including a block of twelve class rooms and a dormitory block. According to the plaintiff, the oil company sent a representative, Paul Ossai, to inspect the building both before and after the '*shooting operations*'. Ossai reportedly promised to '*make good all the damages to the college buildings*', having admitted that the vibrations caused the damage. Seismograph Services initially denied that Paul Ossai was sent to the premises. Following the plaintiff's statement, the company altered its defence. The revised statement claimed that Ossai was only sent to the premises to check the distance to the place of '*shooting operations*', not to inspect the premises. Since there was conflicting evidence in court, the trial judge decided to visit the premises. The judge saw a number of cracks in the wall going to the foundation, concluded that they were caused by the detonation, and awarded damages to the plaintiff. Seismograph Services appealed against the decision. The Supreme Court allowed the appeal of the company, reversing the previous judgment, by holding that the trial judge's own observations could not be used as evidence and was is erroneous for him to treat them as established facts.

The above cases have shown that it is difficult to establish both that seismic operations took place or that they caused any damage. In either case, the court encountered difficulty in attributing causality.

The drilling for exploration and appraisal wells is less common than seismic studies, albeit its impact has also been noted by secondary sources. Clearance of vegetation can lead to a long lasting or permanent loss of vegetation. Dredging destroys



vegetation and life, especially if the dredged material is washed back into the water leading to a reduction of living organisms. The most damaging effect of drilling is probably the release of waste. Drilling activities require a significant quantity of 'mud' or drilling fluid. This is a special mixture of clay, various chemicals and water, which is constantly pumped down through the drill pipe and comes out through the nozzles in the cutting tool. The stream of mud returns upwards to the surface, carrying with it rock fragments cut away bit by bit. The waste which is generated is not particularly toxic or harmful but its impact is significant because of the substantial quantities. Discharge of this waste into water leads to the degradation of living organisms in the water (van Dessel 1995, 16 and 20-21).

While court judgments provide little factual evidence on drilling *per se*, there have been court cases pleading damages for activities related to drilling such as collection of oil waste or construction of access roads to drilling sites. In *Umudje v. Shell-BP*<sup>10</sup>, the plaintiffs on behalf of the Enenurhie-Evwreni community in the East-Central State sued Shell-BP for damage resulting from an oil waste pit and the construction of a road. Shell-BP dug an oil waste pit during its exploration activities. In 1969-70, the pit was full and the waste spread over the plaintiffs' farms, ponds and lakes, damaging the land and killing fish. The plaintiffs claimed that Shell-BP refused to pay any compensation. The trial judge of the lower court believed the evidence of the plaintiffs. His judgment in favour of the plaintiffs was later confirmed in the Supreme Court. Idigbe, J.S.C., delivering the judgment, said:

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<sup>10</sup> 5 E.C.S.L.R.

*The evidence which the trial judge accepted was that oil-waste collected in the location occupied by, or at least in the control of, the appellants, escaped... into Unenurhie land where it damaged the respondents' ponds. The trial judge on the evidence before him accepted the above facts as proved.*<sup>11</sup>

In addition to the issue of oil waste, the case *Umudje v. Shell-BP*<sup>12</sup> also dealt with the construction of a road, which is another harmful aspect of oil operations. The oil company constructed a road across a waterway and failed to insert enough culverts under the road. At the location of the road, fish previously moved across the land into the plaintiffs' artificial ponds and lakes during the rainy season. After the road construction, fish could no longer move across. The local people were deprived of earnings from fishing. Said the trial judge of the lower court:

*I have no doubt in my mind that the access road blocked the passage of water during the flood season, and made it impossible for water and fish to go into the ponds on the right side of the access road during the flood season. It has definitely starved the ponds and lakes of water and fish, notwithstanding the fact that five culverts were erected under the access road.*<sup>13</sup>

The lower court awarded 7,200 Naira to the plaintiffs in respect of the damaged ponds, lakes and farm land. The oil company appealed against the judgment. It claimed,

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<sup>11</sup> Per Idigbe, J.S.C. at page 571.

<sup>12</sup> 5 E.C.S.L.R.

<sup>13</sup> Per Idigbe, J.S.C. at page 568.

among other things, that '*the facts alleged by the said plaintiffs in their evidence cannot support any of the reliefs claimed*'. The Supreme Court rejected this ground of appeal. Subsequently, the appeal by Shell-BP was dismissed and the judgment of the lower court was confirmed. However, the Supreme Court reduced the award of damages from 7,200 to 6,000 Naira as there was no sufficient evidence of damage to the plaintiffs' lakes and farm land.<sup>14</sup> The above case indicates that it may be difficult to prove the consequential damages arising from oil operations.

There have been a number of other lawsuits dealing with the construction of access roads. For instance, in *Nwadiaro v. Shell*<sup>15</sup>, the plaintiffs on behalf of the Umusaziokwushi family of Obutu Village sued Shell for blockading the '*Utu Iyi Efi Creeks and Ponds*'. In 1966, Shell constructed an access road to an oil well location which blockaded the village creeks, pond and lakes. Shell had never paid compensation to the family, although some payments were made to other persons disturbed by Shell's road construction. Meanwhile, the blockage continued and the plaintiffs were prevented from using their creeks, pond and lakes for almost three decades. In court, Shell did not file a mandatory statement of defence for five years claiming that the plaintiffs had no right to sue the company over two decades after the road was constructed. The Court of Appeal ordered Shell to file a statement of defence, yet the case remained unresolved.

In contrast to the Umudje case, in the Nwadiaro case, the court did not encounter a difficulty in assessing the consequential damages because Shell had earlier admitted liability. But the case suggests that, even if damage has convincingly been proved in

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<sup>14</sup> There were also legal grounds for this reduction.

<sup>15</sup> [1990] 5 NWLR.

court, oil companies may continue to adversely affect village communities without paying compensation. As a whole, the cases discussed above would suggest that courts may encounter specific difficulties in attributing causality and assessing the consequential damages in oil related litigation.

The above cases point to differences between temporary effects of oil operations and the effects of permanent oil company infrastructure on village communities. When permanent structures such as roads or canals are constructed, as in *Nwadiaro v. Shell*<sup>16</sup>, the social effects may remain for decades, while the local people receive no compensation. Indeed, the effects of road construction or canal dredging may be more damaging than the effects of any temporary exploration activity. For instance, in *Seismograph Service v. Mark*<sup>17</sup>, the destruction of fishing nets constituted an externality but this externality was temporary. In contrast, a road or a canal will remain in place for decades or longer. In other words, the impact of oil exploration on village communities is likely to be less severe in the long-term than the impact of oil production because it tends to involve temporary work rather than the establishment of permanent production facilities.

#### **5.4. Impact of Oil Production on Village Communities**

Secondary sources (e.g. van Dessel 1995) have noted that oil production, like oil exploration, has a significant adverse impact on the environment (see Table 5.2.). Oil production and oil exploration activities have a number of externalities in common

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<sup>16</sup> [1990] 5 NWLR.

<sup>17</sup> [1993] 7 NWLR.

including waste management and disturbance during construction of the facilities and infrastructure. For instance, burial of oily or chemical waste in the process of exploration and production bears enormous ecological and health hazards as it can affect ground water, resurface during the rainy season or directly pollute the surrounding environment (van Dessel 1995). The issue of waste and the oil infrastructure have already been noted in the previous sub-section. In this sub-section, we deal with externalities specific to oil production.

In order to illustrate the impact of oil production on village communities, we have selected a number of Nigerian court judgments. The issues discussed include gas flaring, oil spills and operational accidents such as well blow-outs.

**Table 5.2. Potential environmental impact of oil production activities**

Production Activity	Potential Environmental Impact
All activities	<ul style="list-style-type: none"> <li>• Loss of vegetation/ arable land</li> <li>• Hydrological changes</li> <li>• Disturbance of communities/ flora/ fauna</li> <li>• Waste pits in the field</li> <li>• Oily waste burned in the flare pit</li> </ul>
Well operations	<ul style="list-style-type: none"> <li>• Soil, water pollution</li> <li>• Disturbance of communities/ flora/ fauna</li> </ul>
Flowlines, pipelines	<ul style="list-style-type: none"> <li>• Soil, water pollution</li> <li>• Disturbance of communities/ flora/ fauna</li> </ul>
Flowstations	<ul style="list-style-type: none"> <li>• Ambient air quality</li> <li>• Acid Rain</li> <li>• Soot/ heavy metal deposition</li> <li>• Greenhouse effect</li> <li>• Pollution/ fire affecting flora</li> <li>• Soil/ surface water pollution</li> <li>• Disturbance of communities/ flora/ fauna</li> </ul>
Terminals	<ul style="list-style-type: none"> <li>• Soil/ surface water pollution</li> <li>• Disturbance of communities/ flora/ fauna</li> <li>• Poor ambient air quality</li> <li>• Ozone depletion (fire fighting agents)</li> <li>• Soil, water, air pollution</li> <li>• Waste problems</li> <li>• Soil pollution</li> </ul>

Source: van Dessel (1995).

The impact of gas flaring is difficult to evaluate as little is known about actual flame temperatures, which can range from 300 to 1400°C, and their effect. According to the World Bank, the total emission of coaldioxides from gas flaring in Nigeria in 1995 was estimated at 35 million tons per year, the total emission of nitricoxides and sulphurdioxides was 210,000 and 40,000 tons/year, respectively (World Bank 1995, volume II, annex I). According to official figures, Shell was the greatest producer of gas emissions in Nigeria in absolute terms, followed by Chevron, Agip, Mobil and other companies. In 1994, Shell produced 37.9% of the total amount of gas flared in Nigeria. By 1997, Shell's share had declined to 27.7% but the company remained the largest source of gas flaring in Nigeria (see Appendix D, Table D.13.). In percentage terms, Texaco flared more gas than any other oil company in Nigeria, followed by Agip Energy (a joint-venture between Agip and the NNPC). In 1997, Texaco flared 99.7% of the associated gas which the company produced, followed by Agip Energy with 99.1%. Agip's subsidiary NAOC flared the lowest percentage of associated gas - 53.5% of the company's associated gas production. Shell and Mobil reportedly flared 64.7% and 64.3% respectively of their total associated gas production (see Appendix D, Table D.13.). What these figures appear to suggest is that there are some differences in terms of the environmental impact of different oil companies in Nigeria.

From a scientific point of view, gas flaring contributes significantly more to the greenhouse effect and air pollution which affects society at large rather than to specific damage in communities, which tends to be limited (van Dessel 1995, 23).<sup>18</sup> The low local

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<sup>18</sup> A number of harmful effects of gas flaring on village communities have been noted by several non-governmental organisations in Nigeria (e.g. ERA 1995). The effects on village communities include the possible destruction of

significance of the adverse effect of gas flaring on specific communities in Nigeria can help to explain why little litigation has arisen from gas flaring and why court cases involving damage from gas flaring had little chance of success. However, some village communities feel disturbed by gas flares, as evidenced with the example of the case *Chinda v. Shell-BP*<sup>19</sup> below.

In *Chinda v. Shell-BP*<sup>20</sup>, the Rumuokani community in Rivers State sued Shell-BP for damage from the *'heat, noise and vibration resulting from a flare'*. The plaintiffs claimed that gas flaring destroyed trees in the vicinity and damaged nearby houses. Holden, C.J., personally visited the site of the gas flare near the village. He could not identify any tangible effects of the gas flare on the surrounding environment. Trees and crops near the gas flare seemed *'perfectly healthy'* to him.<sup>21</sup> From the evidence before him, the judge concluded that *'even if such damages are considered to be claimable in this action, I hold that there is no evidence of them so the claims must fail.'*<sup>22</sup> In other words, the judge encountered a difficulty in establishing causality and hence dismissed the plaintiffs' claim.

While court cases highlight individual instances of the adverse effects of oil production with some precision, secondary sources have attempted to give broad estimates of externalities. We are reproducing some of the findings of this research. According to the World Bank's figures, there were almost 300 oil spills per year in the

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house roofs. Nigerian houses are often covered with steel roofs which may corrode as a result of acidification. But these effects of gas flaring are rather insignificant.

<sup>19</sup> (1974) 2 R.S.L.R.

<sup>20</sup> (1974) 2 R.S.L.R.

<sup>21</sup> Per Holden, C.J. at page 10.

<sup>22</sup> Per Holden, C.J. at page 10.



Delta and the Rivers states alone between 1991 and 1993, which were the main oil-producing Nigerian Federal States at the time (see Appendix D, Table D.14). The key oil polluter was Shell, accounting for over 75% of the spills. According to Shell's own figures, the company had 190 spills per year from 1989 until around 1995, involving on average 319,200 US gallons of oil per year, damaging land and polluting water (Rowell 1996, 293). Depending on the location, oil spills can poison water, destroy vegetation and kill living organisms, which has been shown by various '*post impact*' studies (van Dessel 1995, 23; Amajor 1985). The environmental impact of oil spills in the Niger Delta is increased by floods. During the rainy season, over 80% of the Niger Delta is flooded (Moffat and Linden 1995, 527). Water carries the oil onto villages and farm lands, while floods also render the clean-up of oil spills more difficult.

Oil spills in Nigeria are an undisputed fact yet their causes are disputed. Oil companies often claim that spills are caused by sabotage, while environmentalists claim that spills are due to deteriorating equipment. According to the World Bank (1995, volume II, annex M), oil spills are generally caused by companies themselves, with corrosion being the most frequent cause. Oil companies appear to have used fictitious claims of sabotage to escape liability for compensation payments (this will be explained in section six of the thesis). Even according to Shell's own figures for the period 1991-1994, corrosion was the most frequent cause (see Appendix D, Table D.3.).

While corrosion and equipment failure are important causes of oil spills, the age of installations appears to play a crucial role. Shell's own figures suggested that the age of pipelines and flowlines largely determined the frequency of leaks. The older the

flowlines were, the more susceptible they were to leaks. 95% of all leaks occurred in flowlines 11 years or older (see Appendix D, Table D.15.).

Evidence from court cases suggests that the impact of oil spills is more visible than, for instance, the impact of seismic surveys or gas flaring. The impact of oil spills is direct, immediate and can be easily detected by villagers. Damaged crops and polluted water can be easily identified as a result of oil spills, which can partly explain why a significant number of court cases against oil companies in Nigeria are based on oil spills.

In a recent case *Shell v. Isaiah*<sup>23</sup>, three plaintiffs sued Shell for damage from an oil spill. In July 1988 an old tree fell on an oil pipeline which ran across the plaintiffs' land. A Shell sub-contractor was hired to repair the pipeline. In the process of repairing the pipeline, the oil spill continued for several hours polluting the nearby swampland and farmland. The plaintiffs claimed that the sub-contractor failed to construct an 'oil trap' to contain the oil spill, which was denied by Shell. Having considered the evidence before him, the trial judge concluded that there was no oil trap to contain the oil spill.

Shell denied responsibility for the oil spill by claiming that the oil pipeline was 'cut by hacksaw' hence the spill amounted to sabotage. But Shell's defence witnesses contradicted themselves. Three of them admitted in court that the oil leak was caused by a fallen tree. A judge of the Court of Appeal commented in the court ruling:

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<sup>23</sup> [1997] 6 NWLR.

*The issue of sabotage raised by the defendant [Shell] is neither here nor there. Sabotage was discovered after the second investigation. I am, having regard to the facts and circumstances of this case, convinced that the defence of sabotage was an afterthought.*<sup>24</sup>

The Isaiah case indicates that oil pipelines in Nigeria are not adequately protected against external influences. It also suggests that the oil companies' efforts to clean up oil spills may be unsatisfactory in the sense that they negligently fail to contain an oil spill.

As previously stated, the impact of oil spills is more visible than, for instance, the impact of seismic surveys. Nevertheless, even if a company admits an oil spill, the plaintiff's evidence may be rejected by a judge. In *Ogiale v. Shell*<sup>25</sup>, Shell was sued by the Olomoro Isoko community in Delta State. The plaintiffs claimed compensation for damage to the land suffered as a result of oil production and gas flaring. The defence of the oil company rested on the contention that the '*company's activities were carried out on the area of land which the company legally acquired*'. Donald Otoakhia, Shell's Senior Lands Supervisor, admitted that the company had five oil spills in the area in the period 1973-80, yet he said that: '*We did not damage anything owned by Olomoro community. Individual families and quarters who own lands affected by our operations were duly paid. My company is not liable to the plaintiffs' claim*'.

The plaintiffs lost in the lower court, based on the judge's conclusion that they failed to prove their claim. The appeal of the plaintiffs was also dismissed by the Court of Appeal. The court proceedings centred around the question of admissibility of expert

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<sup>24</sup> Per Katsina-Alu, J.C.A. at page 252.

<sup>25</sup> [1997] 1 NWLR.

opinion which indicates how difficult it is to prove environmental damage. The long-term environmental effects of oil spills were not considered during the trial. T.E. Williams, Shell's lawyer at the appeal trial, claimed that *'the soil of the appellants' land would take a period of between 6 months and 5 years „to get normal”* ' again. Such long-term effects of oil spills may not be competently considered by a court, as it has been difficult enough to prove short-term effects of visible oil spills.

Apart from gas flaring and oil spills, production activities bear a certain risk of operational accidents which can lead to major environmental disasters. An important adverse effect of oil operations appears to be well blowouts. Since no statistical data is available, it is instructive to analyse a specific case. In *Shell v. Farah*<sup>26</sup>, several families sued Shell for compensation from a well blow-out. In 1970, Shell-BP had a well blow-out at the Bomu II oil well. It took the oil company several weeks to bring the situation under control. Meanwhile, oil and other substances had polluted the adjoining land. Crops and trees were destroyed, while the farming land was rendered infertile. Shell had promised to rehabilitate a land area of 13.2 h and to hand the land back to the community afterwards. To facilitate land rehabilitation, the land was vacated by the community. 18 years after the blow-out, in March 1988, Shell wrote a letter to the plaintiffs' solicitor claiming that the land had already been rehabilitated and *'handed back'* to the plaintiffs. Moreover, Shell claimed that it had paid £22,000 in compensation for damaged crops, trees and other objects and another £1,000 for damage to the land. However, the company broke the promise and rehabilitation was not carried out. In the meantime, the local people could neither farm nor use the land in any other way. The plaintiffs claimed that they had never

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<sup>26</sup> [1995] 3 NWLR.

received any compensation for damage to the land. The families involved finally engaged in litigation in 1989, nineteen years after the blow-out.

Shell admitted that the blow-out had occurred. But the extent of the damage was disputed. A key witness in the trial was Professor C.T.I. Odu of the Department of Agronomy, University of Ibadan. Odu, the project co-ordinator of the land rehabilitation exercise, claimed that *'the area had returned back to normal'* by 1975. In 1989, Shell has allegedly sent him to reassess the ecology of the Bomu area. He claimed that only the area of about 1 out of 13 hectares indicated poor soil, the rest of the area was allegedly rehabilitated. He blamed the poor crop performance on erosion due to poor soil management by the community. The witness finished by saying:

*We concluded that the poor performance of the crops in this area was not due to the pressure (presence) of crude oil which several scientists both within and outside Nigeria have shown to be beneficial for crop production at level of about 1 per cent or below. [sic]*

In effect, Odu's statement suggested that oil spills can be beneficial for village communities, but he failed to quote any environmental study to prove his claim. The trial judge doubted the genuineness of Prof. Odu's evidence. In his view, there was a conflict of interest between Odu's work for Shell and his court testimony. Said he:

*What did the defendant [Shell] do? They engaged the same man to go back to the area to re-assess the soil and the nature of the vegetation in the area.*

*This is in effect asking the same expert to go back to the land and confirm that he actually did the job that he was commissioned to do some years ago. If I may ask, what kind of report do the defendant [sic] expect from Defence Witness 2 [Prof. Odu]? The defendant has been sued because the land has not been rehabilitated, obviously the Professor would not have come back with a report that the land has not been rehabilitated and that crops are not growing in the area that is said to be rehabilitated.*<sup>27</sup>

Therefore, the court regarded Shell's main expert as an unreliable witness. The main expert of the plaintiffs was Dr. Edward Obiozo, lecturer in Biochemistry at the University of Port Harcourt. In his 1988 report he concluded that the soil around the Bomu oil well continued to be heavily polluted with patches of crude oil tar and other chemicals, eighteen years after the accident. Among other things, the report concluded:

*7. On the average, 49-53 per cent of the land area affected are completely bare i.e. still do not support plant growth, and where there are plants at all, these are stunted, pollution-resistant siam weeds and guinea grass.*

*8. Agricultural crop productivity in the area was as patchy as the other plants and very low. The land in its present condition cannot support any good crop growth.*

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<sup>27</sup> Per Edozie, J.C.A. at page 184.

9. *The area cannot be deemed to have been rehabilitated to its pre-impact conditions and cannot be so unless certain further actions are taken.*

The trial judge was initially uncertain about the evidence presented by the plaintiffs and by the defendants which contradicted each other. He subsequently appointed two referees to re-assess the evidence. One referee was nominated by Shell, the other by the plaintiffs. The joint report supported the evidence of the plaintiffs. The court established that Shell's evidence was not reliable. As a result, in the lower court, the plaintiffs were awarded 4,621,307 Naira in compensation. Dissatisfied with the judgment, Shell appealed against the decision. The Court of Appeal confirmed the award.

The case *Shell v. Farah*<sup>28</sup> illustrates the long-term damage arising from accidents in the oil industry. Two decades after an oil related accident, the area was still considered unsuitable for effective farming. The Farah case as well as the other cases has demonstrated that oil operations may have highly damaging effects on the environment and thus on village communities. The case *Shell v. Farah*<sup>29</sup> also indicates that oil companies are unwilling to accept responsibility for damage from oil operations. Shell's expert witness even claimed that crude oil is beneficial to crop fertility. The same expert, Clifford Temple Idigi Odu<sup>30</sup> of the University of Ibadan, had claimed 20 years earlier in *Chinda v. Shell*<sup>31</sup> that damaged leaves near a gas flare were due to poor soil fertility, not

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<sup>28</sup> [1995] 3 NWLR.

<sup>29</sup> [1995] 3 NWLR.

<sup>30</sup> It appears from the court cases that C.T.I. Odu had been retained as an expert by Shell for well over 20 years.

<sup>31</sup> (1974) 2 R.S.L.R.



due to the oil operations. Of course, those repeated claims are absurd, yet they have helped Shell to escape liability for environmental damage as in the Chinda case.

Evidence from the above cases on oil production confirms the earlier speculation that Nigerian courts may encounter difficulties in attributing causality and assessing consequential damage. Cases such as the Farah and the Chinda cases exemplify that direct proof of externalities arising from oil operations may frequently be disputed. In any case, the above discussion of oil production activities points to the significance of the adverse impact of oil operations. This adverse impact can directly result in litigation against oil companies.

## **5.5. Land Disputes and Oil Operations**

The adverse impact of oil operations cannot be adequately explained without reference to land issues. Oil companies are dependent on access to land because they derive their wealth primarily and directly from below the earth's surface. Village communities are dependent on land as a natural resource for farming, fishing and hunting. Land disputes between companies and communities may, therefore, arise. This subsection discusses land disputes in the oil producing areas, by using evidence from Nigerian court judgments.

Oil operations affect the use of land in village communities in a number of ways. The use of land is, for instance, affected by the existence of pipelines and flowlines. As Ashton-Jones (1998, 187) has pointed out, pipelines cut across the footpaths of the local people, thus severely disrupting foot communication, a primary method of movement in

the oil producing areas.<sup>32</sup> Pipelines also forced some changes to traditional land use patterns. In particular, farmers cannot burn bushes in the vicinity of pipelines because pipelines could easily be set on fire (Ashton-Jones 1998). Court judgments on oil related land issues do not provide factual evidence on topics such as pipelines and are largely limited to land disputes between villagers in the oil producing areas.

From the preliminary analysis of the available court judgments, it would appear that there are two main sources of land disputes in oil related litigation: disagreement over land titles between families and communities, and disagreement over the quantum of compensation to be paid by an oil company. Land disputes involving an oil company often arise when the company is prepared to pay compensation to a community in respect of land acquisition or damage. If two different communities dispute a piece of land and one community receives a payment, the other community may be aggrieved. Also, even if there is merely the prospect of receiving a payment, the local people may rush to receive a share. Different claimants might dispute the entitlement to compensation in respect of the same piece of land.

Oil companies are not the only source of land disputes associated with oil operations. Land disputes may have other causes such as ethnic conflicts. On the most basic level, oil operations may have no impact on land disputes, they may aggravate existing disputes or they may cause new ones.

Oil companies have often found themselves caught in long-standing disputes in oil producing areas. Those long-standing disputes with regards to land usually centre around

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<sup>32</sup> The problem is particularly severe if a pipeline is fenced on both sides.

issues such as boundaries between plots of land (as in *Adomba v. Odiesi*<sup>33</sup> below), ethnic conflict (as in *Otuedon v. Olughor*<sup>34</sup> below), the nature of land ownership or laws of inheritance (as in *Ogulu v. Shell*<sup>35</sup> below) or a combination of those factors. Some of these disputes started long before an oil company arrived in a particular area.

In this context, oil companies have often intensified existing disputes, as can be seen in *Adomba v. Odiesi*<sup>36</sup>. In that case, Agip entered communal land near Oloibiri in Rivers State in 1977. The plaintiffs, representing the Ekoni family of Opomatoba, sued the defendants, representing the Ake family, for having received rent and compensation arising from Agip's oil operations. Although land ownership was the disputed matter, compensation payments from oil companies appear to have been the motive behind the lawsuit. The plaintiffs asked the court for a declaration that they were entitled to all compensation payments, including those already paid and 143,234 Naira deposited in court by Agip, and they also asked the court to impose an injunction against Agip to prevent them from paying any compensation to any persons other than themselves. The plaintiffs won the case and were then entitled to Agip's compensation payments.

Even though the court case was over compensation from oil operations, there had been a long-standing land dispute already lasting for at least 20 years before Agip came to the area. The two families had been engaged in litigation since the 1950s over the said land. There had been two lawsuits Nos. 17/58 and 18/58 in the Oloibiri Native Court before the case was later transferred as Suit P/57/58 to the Port Harcourt High Court.

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<sup>33</sup> 1 R.S.L.R. (1980).

<sup>34</sup> [1997] 9 NWLR.

<sup>35</sup> (1975/76) R.S.L.R.

<sup>36</sup> 1 R.S.L.R. (1980).

From the court judgment, it appears that the defendants had continued to use the land in question despite an injunction by the Native Court '*to restrain the defendants from using the land in dispute until defendants establish their right of ownership over the land in dispute*'.<sup>37</sup> Oil operations only revived an old dispute.

The case *Adomba v. Odiesi*<sup>38</sup> also shows the problems of determining boundaries between different tracts of land. The Ake family did not deny that the Ekoni family won the lawsuit in the customary court. However, they denied the land rights of the plaintiffs, claiming that the customary court case involved a different plot of land from that in the later case. They disputed the boundaries of the land named by the plaintiffs. Similar disputes over boundaries are very common in Nigeria because the local people employ imperfect ways of describing land areas. Under English Law, land is usually described by reference to an attached plan unless verbal description can accurately identify the land. In customary practice, land areas are given specific local names and the description of the area is often merely by reference to the name. In land contracts under customary law, boundaries are often inaccurately defined, being indicated by '*cairs, mounds, or ridges of earth, trees or grass, or by streams or other natural features*' (Onwuamaegbu 1966, 105-108).

In *Adomba v. Odiesi*<sup>39</sup>, both parties presented plans showing the plot of land, but these did not provide adequate evidence to decide the case. The plaintiffs referred to the disputed land as '*Edumanyo*' or '*Edumato/Emeni*', the defendants referred to '*Edum*

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<sup>37</sup> Per Wai-Ogusu, J. at page 150.

<sup>38</sup> 1 R.S.L.R. (1980).

<sup>39</sup> 1 R.S.L.R. (1980).

*Ebela*’ or *‘Ebela’*, while Agip referred to *‘Nembe A Location’*. In addition, the plaintiffs claimed that the land called *‘Ebela Piri’* of the customary law case of 1958 was the same as *‘Edumanyo’* of the lawsuit in 1980, which added to the confusion. In the lawsuit of 1958 no plan was attached because the case was decided under customary law, so no comparison could be made with a plan prepared by a land surveyor for the later case. According to the judge, *‘the lands involved in those Oloibiri Native Court Suits cannot with certainty be said to be the same land as was involved in P/57/58’*.<sup>40</sup> Both the plaintiffs and the defendants claimed that Agip’s Nembe A Location was within their communal land area, but none of them had a formal proof of land ownership.

The Adomba case is an example of a long-standing dispute between different communities in the same area. Many land disputes have an ethnic background, too. In *Otuedon v. Olughor*<sup>41</sup>, the Gbolokposo people sued the Ugbomoro Village, Shell-BP and two other families over compensation owed to them in respect of Shell’s operations. The plaintiffs from the Itsekiri ethnic group and the defendants from the Urhobo ethnic group had been engaged in litigation from 1925 at the very least. That means, the land dispute lasted over 70 years. Shell only came to the area in 1963 when the land dispute had already lasted 40 years. The dispute was exacerbated when Shell paid compensation in respect of land acquisition to the defendants rather than to the plaintiffs. The case shows, however, that oil companies may find themselves drawn into a long-standing ethnic dispute.

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<sup>40</sup> Per Wai-Ogusu, J. at page 145.

<sup>41</sup> [1997] 9 NWLR.

Sometimes an oil company may be drawn into a land dispute because land ownership or the laws of inheritance are disputed within a community. An interesting case is *Ogulu v. Shell-BP*<sup>42</sup>, in which the plaintiff - Oyi Ogulu of Egbeama village - sued Shell-BP in order to receive rent payments due from the '*Edum Ogboko Land*'. The case is different from the Adomba and the Otuedon cases in that the land conflict involved members of the same village community.

The case *Ogulu v. Shell-BP*<sup>43</sup> was preceded by two earlier court judgments on the same subject matter involving community members in Egbeama. In the first court case which started in 1970 in the same High Court of Rivers State, members of the Egbeama community sued the elder brother of Oyi Ogulu, Chief Ibe Ogulu and Shell-BP.<sup>44</sup> The community representative sought an injunction against Chief Ogulu to restrain him from receiving any further payment from Shell-BP. Oyi Ogulu's elder brother had received payments from Shell-BP for the '*Edum Ogboko Land*' claiming that the land was family-owned, while other community members claimed it was communal land. Said the trial judge: '*I am satisfied that the land on which these two locations are situated is not communal land but land belonging to first defendant's [i.e. the elder brother of Oyi Ogulu] family*'.<sup>45</sup> Oyi Ogulu's elder brother hence won the suit.

After the death of his elder brother, Oyi Ogulu claimed that he had succeeded him in the exercise of land rights on behalf of the family. Another lawsuit followed in 1971, in which the community representatives sued the Otu-Wariboko family including Oyi

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<sup>42</sup> (1975/76) R.S.L.R.

<sup>43</sup> (1975/76) R.S.L.R.

<sup>44</sup> PHC/11/1970, quoted in *Ogulu v. Shell-BP* (1975/76) R.S.L.R.

<sup>45</sup> Per Manuel, J. at page 69.

Ogulu.<sup>46</sup> They sought a declaratory judgment that the disputed land is the '*communal property of the entire Egbe Ogbogolo family including Otu-Wariboko family*', not family land. The trial judge concluded that the disputed land was indeed the '*communal property of the entire Ogbogolo people and not the property of any unit of the Ogbogolo people*'.<sup>47</sup> Oyi Ogulu's family hence lost the case. This court judgment was reaffirmed in the case *Ogulu v. Shell-BP*<sup>48</sup>. In this third court case, the judge concluded that the disputed land became communal, as opposed to family owned, after the death of Oyi Ogulu's elder brother. He thus dismissed the suit.

The three cases above indicate that oil companies may find themselves involuntarily drawn into land disputes. Sometimes the company is sued directly as in *Ogulu v. Shell-BP*<sup>49</sup> and sometimes the company is sued as the second or third defendant alongside the local community or family as in *Adomba v. Odiesi*<sup>50</sup>, though the oil companies do not wish to be drawn into land disputes. In the *Adomba* case, Agip's lawyers did not wish to appear in court. But the judge ordered that '*as stakeholders in the whole dispute it was necessary for them to have been joined*'.<sup>51</sup> The Agip lawyers still attempted to distance themselves from the dispute. Finally, Agip managed to stay away from the court proceedings by promising that they would, nevertheless, abide by the final decision of the court. Therefore, the oil companies often manage to keep aloof from

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<sup>46</sup> PHC/84/71, quoted in *Ogulu v. Shell-BP* (1975/76) R.S.L.R.

<sup>47</sup> Per Manuel, J. at page 70.

<sup>48</sup> (1975/76) R.S.L.R.

<sup>49</sup> (1975/76) R.S.L.R.

<sup>50</sup> 1 R.S.L.R. (1980).

<sup>51</sup> Per Wai-Ogusu, J. at page 144.



local land disputes. Most frequently, when communities go to court over land issues, they tend to sue the neighbouring family or community, not the oil company, as in the case *Eze v. Okwosha*<sup>52</sup> below.

While oil companies may be involuntarily drawn into disputes, they can themselves trigger off land disputes - particularly litigation in courts - because of the careless way in which they investigate land claims. According to a survey among over 300 local people in Rivers State by Onyige (1979, 148), 56% of the respondents had been involved in at least one land-related court case in their lives. Most of the respondents in Onyige's survey largely attributed their involvement in land disputes to oil operations.<sup>53</sup> In the case *Eze v. Okwosha*<sup>54</sup>, the Ossai Oriaku Ezeoduwa family of the Umdei village in Imo State sued the Umuogini family of Obutu village over title to a plot of land and a stream. The lawsuit arose out of oil operations by Ashland. The plaintiffs claimed that Ashland had from 1973 entered and damaged their land. The land conflict was a direct result of oil operations. At the time of Ashland's arrival, the land ownership was not disputed and the Ossai Oriaku Ezeoduwa family was not bothered that the Umuogini family occupied the land. After the arrival of the oil company, both families scrambled to receive compensation payments from Ashland. Anthony Alphonso Nwakuche, a representative of Ashland, explained how the oil company went about settling the land question:

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<sup>52</sup> 1 IMSLR (1977).

<sup>53</sup> Of all respondents in Onyige's survey, as many as 12% claimed that they had been involved in a land dispute roughly four times during their lifetime (Onyige 1979, 148). Unfortunately, Onyige did not compare his figures with the quantity of land disputes in areas unaffected by oil operations. Such a comparison could help to establish whether the quantity of land disputes in the oil producing areas is higher than average in Nigeria or not. Nonetheless, Onyige's results appear to suggest that land disputes are a very common type of conflict in the oil producing areas.

<sup>54</sup> 1 IMSLR (1977).

*When he received instructions to acquire the location called Urashi I, he placed public notices in the town and the Divisional Office and used the town Cryer to inform the people that the Company was to acquire the area. Before then the Company demarcated the area by cutting traces on the land. 1st defendant applied for compensation because he was there with members of the family on the day of the notice and the assessment. The Company paid them compensation.*<sup>55</sup>

Nwakuche did not try to identify the rightful owners but simply paid money to the first claimants who approached him. Under cross-examination in court, he admitted that compensation had already been paid by the time the plaintiffs filed a lawsuit to restrain the company from paying money. By the time the lawsuit was initiated in court, part of the land was already damaged by oil operations.

The different parties provided completely different accounts of traditional evidence for their respective claims. The plaintiffs claimed that the land belonged to them, while the defendants were merely their customary tenants. They claimed that their family obtained the land 'by conquest' a long time ago. Their ancestor Ossai Oriaku allegedly farmed the land, which was originally owned by the Ogwu people. When the Ogwus started to steal his crops, he killed or expelled all of them and took possession of the land. Subsequently, the land remained in the possession of the Ossai Oriaku Ezeoduwa family. The defendants were merely allowed by the family to occupy the land as customary 'caretakers'. As caretakers, the defendants had tenants who paid them rent in respect of

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<sup>55</sup> Per Chianakwalam, J. at page 313.

the land. They allegedly performed a customary ceremony called Igo-Ife during every farming season. The ceremony, using items such as goats, fowls, kola nuts and palm wine, was aimed to certify that the plaintiffs as land owners allocated land to tenants. The defendants allegedly shared the rent payments with the plaintiffs.

However, the defendants gave an entirely different evidence in court. They claimed that the Umuogini family owned the land '*from time immemorial*' and denied that they were customary caretakers. The plaintiffs were allegedly not the owners of the land in question. The defendants performed the Igo-ife ceremony to bless the land for the tenants. Each tenant paid the defendants 21 yarms as rent for a farming season. But they did not perform the Igo-ife ceremony to the plaintiffs. The land conflict only arose with the arrival of Ashland when the plaintiffs hoped to receive money from the oil company. For three years, the defendants could not fish in the Ugbo Nwaezike stream because the plaintiffs threatened them with a gun. The 1st defendant admitted that he had received money from Ashland but added that '*the plaintiffs did not claim the land when all these compensations were paid to him in respect of the land*'. The judge accepted the evidence of the defendants and their witnesses and rejected that of the plaintiffs. Chianakwalam, J. held that the plaintiffs' evidence of ownership rights was inconclusive and the defendants were the owners of the land.

If Nwakuche of Ashland had investigated the customary land rights more properly before negotiations over compensation with the villagers took place, many problems could probably have been avoided. Nwakuche negotiated with both parties in respect of the disputed ownership of the Ugbo Nwaezike stream without knowing the customary

land rights properly. He agreed '*with plaintiffs to pay them 1000 Naira for the stream and agreed with the defendants to pay them 1100 Naira for the stream*'. He did not pay either the plaintiffs or the defendants in respect of the stream. The money was paid into court instead to remain there until the final settlement of the land dispute. By leaving the final decision to the judge, the company was able to largely keep out of the land conflict. However, by that time, Ashland had already triggered off the land dispute.

Even in cases when an oil company did not trigger off a land dispute, the ignorance of oil companies may have exacerbated an existing dispute. In *Adomba v. Odiesi*<sup>56</sup> mentioned earlier, Agip was drawn into a long-standing dispute. The ignorance of the company, however, exacerbated the conflict as Agip's representatives knew little about customary land rights in the area. According to Gabriel Chioloji, a land supervisor of Agip, the company assumed that the Akipelai community owned the Nimbe A Location partly because of '*the nearness of Akipelai village to the location*'. The Akipelai village was closer to the location than the Opomatoba village. However, he admitted that in Nigeria a plot of land can be some distance from the land owning community. If the Agip staff had been adequately informed about the local customary rights, it is unlikely that the company would not have paid compensation to the wrong community. The above case thus exemplifies some of the problems that may result from the oil companies' ignorance of local land rights.

In general, it appears that oil companies may often pay compensation without much knowledge of the customary land rights of the area. In the case *Shell-BP v.*

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<sup>56</sup> 1 R.S.L.R. (1980).

*Abedi*<sup>57</sup>, the plaintiffs on behalf of the Abadiama people sued Shell-BP for having damaged land previously cultivated by them. Jacob Abedi claimed that Shell-BP had removed soil from the land and that the excavated area of approximately 60 yards by 60 yards was later submerged in water. In addition, he claimed that Shell-BP destroyed property in the process, including 534 palm trees, 36 fishing ponds, 35 fishing canals and 3 religious juju shrines. Abedi claimed compensation from Shell-BP, but the oil company refused to pay to the Abadiama people. Instead, they paid 6 Nigerian pounds and 12 shillings to the people of Gbekebor for the use of the land. Subsequently, the Abadiama people sued Shell-BP but lost the court case on legal technicalities.

The land conflict was probably unnecessary in this case and reflected Shell-BP's ignorance of the customary land rights in the area. When the oil company entered the area in December 1965, the company representatives approached the Gbekebor people but failed to approach the Abadiama people. Shell-BP used a surveyor and a '*contact man*' to identify the owners of the land. In those days, oil companies sometimes used indigenous contact men from their area of operations rather than experts from outside who provided local information to the oil companies. In the present case, it appears that Shell-BP's contact man was a native of Gbekebor, while the Abadiama people had no contact man. Since Shell-BP received information from an indigene of Gbekebor, the company may have been misinformed about the Abadiamas' true land claim.

If the Land Section of Shell-BP had in this case done its work properly, the company would have paid compensation to the Abadiamas as customary tenants for the

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<sup>57</sup> (1974) 1 All N.L.R.

destroyed ponds and other improvements, while money should have been paid to the Gbekebor people as land owners for the use of land only.

In general, the oil companies' ignorance of local customary rights causes problems for communities and companies alike. According to a confidential Shell report from 1993, the three main problems in land acquisition are: communication and wrong interpretations, identifying rightful owners, and resolving disputes and counter claims (SPDC 1993). It could be argued, however, that an even greater problem was the lack of an economic incentive for oil companies to conduct land acquisition in a careful manner. If there is a land dispute, an oil company is able to compulsorily acquire a piece of land notwithstanding an existing conflict between land owners. The regulations introduced under the Petroleum Act 1969 provided that, in the event of a dispute, an amount was to be deposited by an oil company with the Accountant-General of a federal state in full or partial settlement, which was eventually due to the landowners.<sup>58</sup> The amount of compensation deposited was decided by the company. Even though the dispute might not have been resolved and families might have been left landless, a company was allowed to enter a piece of land.<sup>59</sup> Since 1978, oil companies have no longer been required to pay compensation for land but only for any crops, buildings and other objects destroyed on the land (see section three of the thesis). As a result, hostility may arise towards oil companies because the compensation payments are either insignificant or non-existent.

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<sup>58</sup> Regulations 17(1)(c) and (2).

<sup>59</sup> The predicament of land owners under petroleum law was even worse under the Oil Pipelines Act, which did not require an oil company to pay a deposit. That means, a company was able to take possession of a piece of land for the construction of an oil pipeline notwithstanding a dispute and was not required to pay any compensation.

Oil companies did not always generate hostility when they entered a plot of land, particularly before 1978. Indeed, the relationship between oil companies and communities could have been one of co-operation as long as the oil company paid compensation. However, compulsory land acquisition and subsequent low compensation payments could destroy the peaceful relationship between companies and communities, as can be seen in *Nzekwu v. Attorney-General East-Central State*<sup>60</sup>. In that case, the Ogbo family sued the government for compulsory acquisition of 397 acres of their land near Onitsha in the then Eastern Region of Nigeria. Initially, the family co-operated with the oil companies. In 1957, they leased 3.2 acres of land to Total Oil for ninety-nine years at the rate of £945 per annum. In the same year, they let out land to Shell-BP for a ferry ramp at the rate of £200 per annum.

However, in January 1960, the government published a notice of its intention to acquire almost 800 acres of land in the area, including the 397 acres owned by the plaintiffs, who demanded significantly higher compensation than they were offered. The government offered a rate of £10 per annum for 20 years, which was significantly lower than the rates previously offered by the oil companies. The Ogbo family rejected the offer and subsequently sued the government. The Supreme Court awarded the family a sum of £252,600 for the land and the houses thereon which was to be paid by the government. In this way, a land conflict had rendered the family rich. The above case is an example of how a community or a family could capitalise on land acquisition. Nevertheless, such a

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<sup>60</sup> (1972) All N.L.R.



situation could no longer arise after the promulgation of the Land Use Act of 1978, since compensation for land acquisition was no longer paid.

On the whole, the cases discussed in this sub-section illustrate that oil companies often find themselves caught in long-standing land disputes in oil producing areas. But there is evidence that they may cause fresh conflicts or aggravate existing ones, particularly as a result of their ignorance of local ownership structures. In this context, land acquisition may present a source of conflicts between companies and communities.

## 5.6. Conclusion

This section of the thesis assessed the impact of oil exploration and production on village communities in terms of the resulting environmental and social damage. This damage was analysed through the window of litigation. This window excludes those disputes which have not gone to court due to financial, technical or other factors. By looking at this type of litigation, we inevitably ignore evidence of the direct benefits of oil operations to village communities.<sup>61</sup> Court cases also fail to provide evidence of the adverse secondary effects of oil operations such as migration of oil workers into oil-producing areas as well as the psychological and cultural effects of oil operations.<sup>62</sup> With regards to many secondary effects, it is difficult to say whether oil operations led to

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<sup>61</sup> Onyige (1979, 189-191) mentioned a number of beneficial effects of oil operations such as the construction of access roads and scholarships.

<sup>62</sup> Onyige (1979, 151-152, 155-156 and 176) has mentioned a number of adverse effects, which cannot be derived from court cases. These included the impact of migration of oil workers and the rise in food prices. Court cases, moreover, provide little evidence of the psychological and cultural effects of oil operations. Onyige (1979, 188), for example, has pointed to the effect of temporary employment of young people by oil companies. Those young people who are employed by oil companies are highly paid for a short period of time. By increasing their spending habits and imitating a culture alien to them, their lifestyles may quickly become distinctive from the rest of the community. Both the young men and the village community at large may find it difficult to adjust to those sudden changes. In any case, more in-depth field research is needed into those issues.

adverse or beneficial changes.<sup>63</sup> Court judgments, moreover, do not allow for a comparison between the scope of environmental damage in Nigeria and in other countries.<sup>64</sup> In this sense, our view is biased. Yet it was not the goal of this thesis to weigh the benefits and costs of oil operations. Rather we set out to analyse sources of conflict and civil strife. Evidence from 'real world' cases illustrated a number of those sources.

While there are a number of larger environmental problems in the oil producing areas such as coastal erosion, which are not caused by oil company activities, the direct effects of oil operations typically result in environmental and social externalities affecting specific areas and people. Oil pollution may have a limited impact on the ecology of the oil producing areas as a whole. The destruction of crops or fishing sites, meanwhile, can have a disastrous effect on specific families and communities by depriving them of any means of subsistence.

That ecological and social damage is incidental to oil operations and that it can never be fully eliminated is perhaps self-evident. Commenting on the impact of seismic surveys, J.P. van Dessel, formerly Shell's head of environmental studies in Nigeria, remarked that *'further reduction of the impact of seismic operations in the mangrove*

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<sup>63</sup> Writing on the Ogba/Egbeba district of Rivers State, Onyige (1979, 164-165) has found that many farmers had shifted from yam to cassava production as a result of the influx of oil workers. Oil workers consumed a substantial amount of gari, which is made from cassava. It is not entirely clear whether this shift can be classified as either beneficial or adverse to the village communities.

<sup>64</sup> Secondary sources suggest that, from an international perspective, oil operations in Nigeria appear to cause greater environmental and social damage than in many other oil producing countries. For instance, gas flaring in Nigeria is more significant as a percentage of total gas production than elsewhere in the world. According to the World Bank, up to 76% of the associated gas from oil wells was flared in Nigeria in 1995, as compared with 0.6% in the US and 4.3% in the UK (see Appendix D, Table D.16.). By 1997, the percentage of flared gas had fallen to roughly 71% (*Vanguard*, October 1, 1998). This percentage was likely to fall further as a result of new investments in gas related projects in Nigeria but a continuation gas flaring was likely in the short-term and the medium-term. If judged by the example of gas flaring, it would appear that oil companies have taken environmental concerns in Nigeria less seriously than in other countries.

(further reduction of the line width) is not possible without jeopardising the safety of the crews or the quality of the data' (van Dessel 1995, 19). Similarly, the oil industry cannot function without infrastructure such as access roads, which requires interactions between oil companies and village communities. Nonetheless, most forms of damage such as oil spills cannot be blamed on technical and geographical difficulties alone, but must be attributed to a lack of corporate effort and the failure of Nigeria's legal provisions to protect the environment and the village communities (see section three of the thesis).

The adverse impact of oil operations often appears as the result of careless operating practises and the lack of funding. By implication, it has to be assumed that this impact could be significantly minimised. As shown earlier, oil spills are often caused by operational faults and inadequate maintenance of oil installations. Oil companies in Nigeria could reduce the impact of oil operations in various ways.<sup>65</sup> For instance, many oil spills could be either avoided or better contained. In *Shell v. Isaiah*<sup>66</sup> mentioned earlier, Shell negligently failed to contain an oil spill. In *Umudje v. Shell-BP*<sup>67</sup> mentioned earlier, Shell-BP constructed a road across a waterway but failed to insert enough culverts under the road. In both cases, damage from oil operations could have been avoided or minimised.

Legal provisions in Nigeria do not appear to have been particularly effective in minimising the adverse impact of oil operations (see section three of the thesis). Indeed,

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<sup>65</sup> Secondary sources on oil operations have, for instance, suggested that abandoned wells can be plugged (Hyne 1995, 293). Yet, according to J.P. van Dessel, a small fraction of Shell's non-producing wells in Nigeria have been adequately abandoned, 'most of them were simply left behind' (van Dessel 1995, 16).

<sup>66</sup> [1997] 6 NWLR.

<sup>67</sup> 5 E.C.S.L.R.

Shell's Health, Safety and Environment Adviser in Nigeria stated in 1998: '*Law is the least important factor in terms of environmental protection*'.<sup>68</sup> According to him, the three main factors were: control over decision-making, culture and the age of installations, although the third factor appears to result from the first two. In terms of decision-making, funding is the key obstacle to the protection of the rural environment and the village communities. Environmental improvements are often costly, while oil companies are likely to be reluctant to spend money on environmental protection. The economic activity of oil companies is dictated by the profit motive, which can also be said of the conflicts with oil producing communities. The central government and the oil companies have a natural incentive to retain revenue and minimise costs in a competitive bidding system. Contractors are under pressure from Shell and the other foreign companies to perform services at the lowest possible price, which further forces them to minimise costs. Therefore, contractors have little incentive to spend money on the maintenance of oil installations and, generally, on any projects related to village communities and environmental protection. Meanwhile, the purely environmental costs as part of the total oil company expenditure are potentially substantial. According to a 1996 survey on the Nigerian oil industry by the consultancy firms Arthur Andersen and Andersen Consulting, 54% of the oil company executives expect environmental issues in Nigeria such as oil spills and gas flaring to have the greatest effect on abandonment and restoration costs (Arthur Andersen 1997).

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<sup>68</sup> Personal interview with Chris Geerling, SPDC's Corporate Health, Safety and Environment Adviser (Lagos, February 1998).

While the financial costs of environmental protection can be assumed to play an important role in decision-making, cultural influences also appear to be very important, that means, social values which guide decisions made by company staff. Subsidiaries of multinational companies could be assumed to develop specific corporate cultures influenced by both the national culture of the country in which they operate and by the cultural values of the corporate headquarters. Unfortunately, there appears to have been no prior academic research on the dynamics of cultural change in Nigeria's oil companies. Within the cultural context, the most striking feature of the industry's environmental performance is probably the ignorance of oil company staff with regards to environmental and community issues. Referring to the Nigeria Liquefied Natural Gas (NLNG) project, Chris Geerling, Shell's Health, Safety and Environment Adviser, could not understand why anyone would be willing to oppose NLNG as the project would eliminate gas flaring in the long run. In Geerling's view, the NLNG project presents only beneficial effects to the environment and the village communities. Geerling obviously failed to recognise, however, that a project of that nature may also have a significant social and environmental impact on village communities such as compulsory acquisition of land, construction work, laying of gas pipelines or migration of oil workers into the area.<sup>69</sup> The views of Shell's environmental head in Nigeria may exemplify the oil companies' cultural ignorance of the problems faced by village communities as a result of oil operations. This ignorance has been reflected, for instance, in the failure of oil companies to properly

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<sup>69</sup> Personal interview with Chris Geerling, SPDC's Corporate Health, Safety and Environment Adviser (Lagos, February 1998). As Ashton-Jones (1998, 173) has noted, Shell's 1995 Environmental Impact Assessment (EIA) study of the LNG plant in Bonny, which has been on the drawing board for over 30 years, did not, for instance, consider the impact of activities carried out in the process of preliminary works such as clearing of vegetation in 1979 and the relocation of the Finima village after 1979.

investigate the local ownership structures before awarding compensation for land acquisition. In *Adomba v. Odiesi*<sup>70</sup> mentioned earlier, Agip's representatives knew little about customary land rights in the area. In general, factual evidence from court judgments, particularly in relation to land disputes, suggests that oil company staff are either ignorant of the problems faced by village communities as a result of oil operations or they attach little importance to those problems.

The data presented in this section of the thesis would suggest that cultural attitudes rather than funding problems are at the root of careless oil company operating practices in Nigeria. In *Seismograph Service v. Mark*<sup>71</sup> mentioned earlier, the destruction of fishing nets by seismic boats, for example, could have been easily avoided through an adequate warning system and closer co-operation with village communities, which would have entailed only insignificant financial costs. In *Umudje v. Shell-BP*<sup>72</sup> mentioned earlier, the impact of the blockage could have been minimised through inserting enough culverts under the road at an insignificant financial cost. In general, evidence from court judgments indicated that many forms of damage from oil operations stem directly from the careless management by oil companies rather than from the lack of funding. From the perspective of oil companies, it would make good business sense to minimise the adverse impact of oil operations when the financial costs involved are low. By minimising the damage from oil operations, oil companies could help to reduce the frequency of community conflicts arising from oil activities on the ground. But cultural attitudes may

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<sup>70</sup> 1 R.S.L.R. (1980).

<sup>71</sup> [1993] 7 NWLR.

<sup>72</sup> 5 E.C.S.L.R.



prevent many initiatives to minimise the adverse social and environmental effects of oil operations on village communities.

On the whole, factual evidence from oil related court judgments provided various indications that the adverse impact of oil operations has led to fresh disputes between village communities and oil companies or contributed to existing disputes. Some of these disputes have, in turn, resulted in litigation.

With regards to the legal side of disputes in the oil industry, our analysis provided indications that Nigerian courts may find it difficult to adequately adjudicate claims for damage from oil operations which are necessarily of a technical nature. In *Shell-BP v. Usoro*<sup>73</sup> mentioned earlier, for instance, villagers encountered problems in trying to prove damage caused by seismic surveys. In general, evidence from court judgments indicated that courts encounter specific difficulties in attributing causality and assessing the consequential damages in oil related litigation. This is likely to have reduced the chances of success of those affected by oil operations in litigation against oil companies in Nigeria. In turn, this could explain why the adverse environmental and social impact of oil operations may result in extra legal forms of protest rather than in litigation.

The analysis in this section of the thesis was confined to the use of court judgments as factual evidence. It cannot explain why more court cases filed by village communities against oil companies have succeeded and higher compensation payments were awarded to communities in the 1990s. The legal dynamics of oil related litigation are explored in some detail in the following section of the thesis.

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<sup>73</sup> [1960] SCNLR.



## **Section 6: Compensation Claims in Oil Related Litigation**

### **Introduction**

#### **6.1. Introduction**

The evolution of litigation is inevitably related to the success of individual litigants. This core section of the thesis investigates how the Nigerian legal system has addressed the litigants' claims against oil companies over time. We observe that a number of legal innovations have been introduced in oil related litigation and that these innovations may have benefited village communities. Our analysis indicates that there is an increased possibility of higher compensation awards to village communities. This seems to have had an impact on the quantity of litigation.

In the period 1981-86, 24 compensation claims against Shell went to court in Nigeria (Adewale 1989, 93). In early 1998, Shell was reportedly involved in over 500 pending court cases in Nigeria, out of which 70% or roughly 350 cases dealt with oil spills, the other 30% or 150 cases dealt mostly with other types of damage from oil operations, contracts, employment and taxation.<sup>1</sup> In the whole of the 1980s, Chevron reportedly had only up to 50 court cases in Nigeria. In early 1998, Chevron was involved in over 200 cases, of which 80-90% or roughly 160-180 cases dealt with oil spills, other

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<sup>1</sup> Personal interview with J.A.Odeleye, SPDC's Legal Manager and Company Secretary (Lagos, February 1998).

types of damage from oil operations or land acquisition for oil operations.<sup>2</sup> This substantial increase cannot be solely ascribed to expanding oil operations. In the 1990s, a number of high profile cases have been won by village communities, notably *Shell v. Farah*<sup>3</sup>, in which ca. 4.6 million Naira (ca. US\$ 210,000) was awarded as damages to a community.

We have analysed 68 court cases, which involved disputes arising from oil company field operations. Reported cases were gathered from publicly available law reports, while a number of unreported cases were obtained from practising lawyers in Nigeria. The collection of cases was aided by Nigerian legal professionals, a Nigerian judge and the author's judgment. The sample of court cases is biased in favour of reported as opposed to unreported judgments because they are more easily available. But the sample probably represents the best possible judgment an outsider can gain on oil related litigation in Nigeria. In this section of the thesis, we utilise 31 of the most representative and relevant court cases.

Before going into the depth of analysis, we investigate why many disputes cannot be resolved through informal negotiations and mediation and may thus result in litigation and violence. This discussion can serve as a window to an understanding of non-legal forms of disputes which in turn can help to understand the dynamics underlying legal disputes. This is followed by an in-depth analysis of litigation with a focus on legal change. We analyse the nature and the dynamics underlying legal disputes between oil

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<sup>2</sup> Personal interview with Ned 'Temi Mojuetan, attorney at the Law & Contracts Department of Chevron Nigeria (Lagos, March 1998).

<sup>3</sup> [1995] 3 NWLR.

companies and village communities in Nigeria by investigating the principles of tort law upon which oil related litigation is based, the legal defences employed by oil companies and legal innovations in oil related cases.

## Negotiation and Mediation in Oil Related Disputes

### 6.2. Compensation Payments through Negotiation and Mediation

Before we discuss the legal principles of compensation claims resulting from oil operations in Nigeria, we analyse evidence from a number of court cases to illustrate specific instances, in which village communities tried to resolve a conflict before they actually went to court. In other words, we use court cases as factual evidence of non-legal forms of disputing.

Anthropological literature (e.g. Nader and Todd 1978) suggests that disputes can take a number of forms. Disputes may go through stages involving informal negotiation, mediation or violence without involving any litigation.<sup>4</sup> Even if a plaintiff initiates litigation, a case may be settled out of court before reaching a court judgment.<sup>5</sup> In

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<sup>4</sup> As Nader and Todd (1978, 15) have pointed out, '*these stages are not neat nor are they necessarily sequential*'. The aggrieved party may, for instance, file a court suit without having earlier confronted an offender.

<sup>5</sup> An example of an out-of-court settlement in oil related litigation in Nigeria is provided by the case *Gardline Shipping v. Joshua* Unreported Suit No. FHC/L/CS/1273/96. In that case, Gardline Shipping Limited sued 28 fishermen in order to limit the company's liability for damages towards the 28 fishermen, who claimed compensation for damage from oil operations. A boat owned by Gardline Shipping, while conducting a seismic survey, tore and dragged away fishing nets of fishermen in the Bonny area of the then Rivers State. 28 fishermen sought compensation from the company for the destroyed fishing nets. The company initiated a lawsuit against those fishermen in the Federal High Court in order to limit the aggregate compensation amount to 47,398 Naira for each ton of the tonnage of the ship in line with the Merchant Shipping Act. Subsequently, the matter was settled out-of-court at the initial request of the fishermen. In general terms, out-of-court settlements appear to be relatively infrequent in oil related litigation in Nigeria. According to SPDC's legal manager, out-of-court settlements at Shell reportedly involve between 5 and 15% of all court cases. Personal interview with J.A.Odeleye, SPDC's Legal Manager and Company Secretary (Lagos, February 1998).

disputes between village communities and oil companies in Nigeria, litigation is an important element but it may occur in only a fraction of disputes. For instance, in one of Shell's two divisions in Nigeria alone, 1081 compensation claims were made between 1981 and 1986, of which 124 claims were settled and only 24 claims went to court (Adewale 1989, 93). In 1979, Agip had roughly 600 unsettled compensation claims in Rivers State alone, but only 6 court cases were pending in Rivers State courts (Onyige 1979, 105 and 148-149). Before a compensation claim comes to court, it may be settled by informal agreement between those affected by oil operations and the oil company or by mediation.

A dispute may start with an attempt at informal negotiation. Once villagers decide to negotiate and to seek compensation for damage from oil operations, they contact the oil company. The company can decide whether to agree to negotiations or not. Negotiations are usually carried out between the oil company and the community leaders. If the company accepts liability, a subsequent assessment of the damage and a compensation payment may be made. The oil company tends to determine the amount of the compensation payment, which may then be rejected or accepted by the claimants. A confidential report commissioned for the Shell-initiated Niger Delta Environmental Survey (NDES) in 1996 criticised the way in which oil companies assess compensation payments in informal negotiations:

*Our investigations revealed that the oil industry operators have their yardstick for assessing what they pay. The victim may reject the offer; if he makes a further appeal [to the company], he may get another paltry upward review after a further delay of about 6 months to a year (Ogbnigwe 1996).*

Evidence from court cases suggests that an unsatisfactory outcome of informal negotiations for those affected by oil operations can lead to litigation. In *Odim v. Shell-BP*<sup>6</sup>, the plaintiffs were paid compensation by Shell-BP in respect of destroyed crops, after negotiations took place. Subsequently, the plaintiffs went to court claiming a higher amount of compensation. They claimed that the negotiations with the oil company were not carried out in good faith and that the company fixed the compensation amounts without the consent of the recipients. A witness admitted that the plaintiffs were notified by the company about the assessment of crops for compensation and that they had received a payment. But the plaintiffs averred that they regarded the compensation payment as merely a temporary payment. When they heard about the promulgation of the Rivers State Minimum Crop Compensation Rates Edict of 1973, they instituted a lawsuit. Under the Edict of 1973, those adversely affected by oil operations were entitled to significantly higher compensation rates for crops than those actually paid by oil companies.

In the *Odim* case, Shell-BP lawyers relied on the provisions of the Oil Pipelines Act, under which compensation payments were to be determined in negotiations with the

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<sup>6</sup> (1974) 2 R.S.L.R..

claimants. There are indications that the 1973 Edict was biased against oil company interests because it involved higher compensation rates than those paid hitherto by the companies. Not surprisingly, Shell-BP lawyers argued against the Edict's provisions. The court judgment reported on the testimony of Shell-BP's Senior Lands Supervisor as follows:

*The 1st defendants [Shell-BP] do not accept for basis of calculation of compensation rates any other law than the Oil Pipeline Law; to accept the rates as fixed by the Rivers State Edict No.7 of 1973 was unrealistic and against the trend of open market prices.<sup>7</sup>*

The Odim case was dismissed because the court regarded the 1973 Edict as unconstitutional. The court further concluded that the plaintiffs had voluntarily accepted a compensation payment, so that they were not entitled to claim an additional compensation payment in respect of the same injury. If the villagers had been aware of the Edict during negotiations, it is likely that they probably would have used it as the basis of their compensation claim.

In another case *Nvogoro v. Shell-BP*<sup>8</sup>, the oil company constructed a road through the middle of a farm occupied by Sunday Nvogoro in the Nweel community in the Ogoni area. While Mr. Nvogoro was away, his brother Bomu led negotiations with Shell-BP. During negotiations with Mr. Iworima of Shell-BP, Bomu claimed compensation for three banana trees and some bamboo trees. He demanded 5 shillings for each banana tree and 20 shillings for each bamboo tree, but settled for a sum of only 17

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<sup>7</sup> Per Wai-Ogosu, J. at page 98.

<sup>8</sup> 2 R.S.L.R. (1973).

shillings for all trees combined. In addition, he claimed £30 for an empty yam barn, but was only paid £3 by Shell-BP. When Sunday Nvogoro returned home, he was surprised that his illiterate brother had been paid compensation. Dissatisfied with the amount of compensation, he initiated a lawsuit against the oil company. Shell-BP used a receipt, thumb-printed by Bomu, as evidence in court. The plaintiff lost the case because Shell-BP had previously paid compensation in respect of the same damage.

The above cases appear to indicate that negotiations with oil companies are often unsatisfactory from the perspective of village communities. When negotiations break down, mediation may take place, though this appears to be less common in Nigeria than negotiation. Mediation involves a third party, usually officials from the Department of Petroleum Resources or the NNPC, who intervene in a dispute to help the two parties to reach an agreement. In *Nwadiaro v. Shell*<sup>9</sup>, the Umusaziokwushi family of Obutu village in Imo State sued Shell after having tried both negotiation and mediation in dealing with the company. In 1966, Shell constructed an access road to an oil well location which blockaded the village creeks, pond and lakes. Shell had never paid compensation to the family, although some payments were made to other persons in 1972. At first, Shell denied any liability for damage from its oil operations, but later engaged in negotiations with those affected. When negotiations broke down, mediation was convened with the Nigerian National Petroleum Corporation (NNPC) acting as intermediary. In late 1984, an investigation was carried out, which included two Shell employees, two NNPC employees and a representative of the Ikesco compensation claims agency, to investigate and assess the compensation claim of the Umusaziokwushi family. A report on the

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<sup>9</sup> [1990] 5 NWLR.



investigation found that Shell was responsible for the blockage. It recommended that the culverts under the road should be reconstructed to allow for a proper flow of water. It further recommended that compensation should be paid to the Umusaziokwushi family. In communication with the NNPC, Shell agreed to pay compensation. In reality, Shell still failed to pay the compensation so the plaintiffs filed a court case demanding 100,000 Naira in compensation. The case *Nwadiaro v. Shell* shows the inadequacy of mediation. Although an investigation was carried out by the NNPC, Shell admitted liability for the damage in the process of mediation and agreed to pay, the oil company failed to pay compensation to the claimants in reality.

In general, the main problem with mediation is that it is not legally binding and there is no agency in Nigeria to enforce the compensation payments. A further problem is that mediation is usually carried out by the NNPC or the oil ministry, which are primarily concerned with the level of oil production and oil revenues rather than with the protection of those affected by oil operations. Compensation payments increase costs for companies, so companies are usually reluctant to pay. The NNPC operates as an oil exploration and production company and has itself refused to pay compensation for damage to communities in some cases.<sup>10</sup> Clearly, the NNPC and the oil ministry have an economic incentive to keep compensation claims to a minimum, so they are unsuitable to act as mediators in disputes between companies and communities. In contrast, as Adewale (1989, 98-99) has pointed out, when the State Ministry of Lands acted as a mediator in those disputes on a number of occasions, both parties reportedly expressed greater satisfaction.

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<sup>10</sup> For instance, in *Ebogbe v. NNPC* (1994) 10 KLR (Pt 22).

In addition to the above problems related to mediation and negotiation, secondary sources suggest that there have been many irregularities in respect of compensation payments made by oil companies. For instance, Onyige (1979, 144-146) investigated the payment of compensation to the Umuodogu family of Omoku in Rivers State by Agip. Agip acquired 20 acres of land in 1975. According to the directives of the Rivers State government at the time, the company should have paid 1,000 Naira per acre, so the Umuodogu family claimed 20,000 Naira. But Agip only paid 3,200 Naira to the family. Of the final sum, 800 Naira were reportedly retained by the company's acquisition officer, 800 Naira were paid to the lawyer who negotiated the settlement, 300 Naira were paid to the surveyor, 500 Naira were retained by the company's 'contact man' who provided information on the local property rights and another 300 Naira were reportedly paid as the lawyer's expenses. Of the 3,200 Naira paid, the family received merely 500 Naira or roughly 15% of the compensation sum in return for 20 acres of land acquired by the company for a period of five years. The above example indicates that neither the compensation payment nor the manner in which the money was paid to the family were adequate.

Irregularities in the payment of compensation appear to have persisted. A confidential report commissioned for the Shell-initiated Niger Delta Environmental Survey (NDES) in 1996 describes some of the problems:

*Oil industry operators approve compensation to be paid to victims whose crops, economic trees and shrines have been destroyed in course of operations [sic]. Such compensation (often tagged 'Ex gratia' payment) is made through various operators who are contractors to the oil industry operators. In such a situation the paltry sums which normally ranges [sic] from 500 to 5,000 Naira in extreme cases are forced down the throat of often dissatisfied victims who are in most cases too poor to undertake the expenses of initiating a suit. (Ogbnigwe 1996).*

The World Bank confirms the view that there are major irregularities regarding the payment of compensation to those affected by oil operations. Said a World Bank report in 1995: *'Compensation may not be paid to the affected community or individuals. Instead, other communities, disbursement agents, or powerful individuals may keep the compensation funds'* (World Bank 1995, volume II, annex M, 75). Even if an oil company pays compensation to those adversely affected by oil operations, the inadequate OPTS rates or the official government rates are used (see section three of the thesis). In addition, damage assessments are often incomplete, according to the World Bank (1995, volume II, annex M, 76).

The above discussion suggests that, from the perspective of village communities, negotiation and mediation are currently unsatisfactory methods of settling compensation claims by communities against oil companies in Nigeria. Because of low compensation payments and irregularities, communities may often be dissatisfied with the compensation procedures. Since mediation and negotiation may not satisfy the claimants and since there

is no independent agency to monitor compensation payments, those affected by oil operations may feel that the only means of redress for them may be to either use violence or to initiate a lawsuit in court against an oil company.

The use of violence and community unrest against oil companies is by no means inevitable. But violence is more likely to escalate over time if those affected by oil operations continue to be aggrieved by those operations. Some evidence from court cases suggests that social unrest may result from the unresponsiveness of companies to demands for social amenities rather than the careless manner in which they operate. An interesting example involving violence is the case *Adizua v. Agip*<sup>11</sup>, in which the Agorua Ajukwu family sued Agip for 800,000 Naira in compensation for damage. Agip used the plaintiffs' farmlands for its Akri and Akri West oil fields from 1967 and 1974 respectively. Initially, the relationship with the Agorua Ajukwu family was entirely peaceful as the company entered into an agreement to pay land rents and compensation, to award scholarships and to offer employment opportunities.

In the course of its operations, Agip operations reportedly caused severe damage to the family land, including the contamination of drinking water by oil spills. In 1982, a pipeline exploded, causing the death of six of the plaintiffs' tenants. Agip and the affected families engaged in negotiations. The company accepted liability for the accident, but the families of the deceased were dissatisfied with the insignificant compensation payments offered. Oil operations continued to have an adverse impact on the plaintiffs' land, so

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<sup>11</sup> Unreported Suit No. HOG/22/97, Imo State HC.

some members of the community decided to coerce the company into the payment of compensation.

It appears that the local people eventually engaged in violent conduct primarily because Agip went back on its earlier promises with regards to compensation payments, scholarships and jobs, rather than because of the actual environmental and social damage that the company was causing. In 1983, Agip stopped paying land rents, which the company had continuously paid from 1967 to 1982. The family claimed that, by 1997, only 15 scholarships had been awarded to secondary school pupils in the area in thirty years. They further averred that Agip had ceased awarding bush clearing contracts to the local people. The conflict between the family and the company escalated when Agip failed to respond to letters and representations from the local people.

It is not clear how violence erupted, but it appears that Agip had contributed to an atmosphere of fear and intimidation. Rather than engaging in negotiations with the local people, Agip decided to call on the security forces. In a letter dated 19 March 1984, Agip's district manager, A. Pirocchi wrote a letter to the Commissioner of Police in Imo State, complaining about the Agorua Ajukwu family's unreasonable demands and asking for armed assistance. Wrote A. Pirocchi:

*We therefore solicit your urgent action to step into this matter so that our production could start immediately and in fact we request that you provide a unit of your men to guard our installations in this area and to ensure that our current programmed activities are uninterrupted.*<sup>12</sup>

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<sup>12</sup> Letter from A. Pirocchi, Agip's district manager, to the Commissioner of Police, Imo State Police Command, Owerri, Agip Ref.No. JPO/WTC/PH/365/84 (19 March 1984).

Following the company's requests for armed assistance in the 1980s and the 1990s, members of the Agorua Ajukwu family claimed that they were repeatedly harassed and intimidated by the police. In November 1996, the company's Akri flowstation was allegedly attacked by around 40 local people. Without investigating the incident, Agip's General Manager of the Port Harcourt District, Umberto Vergine, wrote to the Commissioner in Imo State blaming Chief Ugboma Adizua for the attack of '*some thugs carrying dangerous weapons*'. Once again Agip stressed that they would not bow to local demands. Wrote Umberto Vergine:

*Sir, we believe that as good corporate citizens, we should be able to carry out our legitimate business without being subjected to blackmail and harassment of thugs and attacks on our staff when a landlord wants a contract. We would highly appreciate your intervention to bring book all those responsible for this attack.*<sup>13</sup>

Agip has yet failed to resolve the conflict, relying on security protection rather than peaceful negotiations, which has led to further escalation of the conflict. The entire truth about Agip's conflict with the Agorua Ajukwu family may never be known, but the case indicates that community disturbances are likely to result from a combination of unfulfilled social demands, broken oil company promises and the companies' traditional reliance on the security forces. Since both negotiations as well as the use of violence failed, the Agorua Ajukwu family decided to take Agip to court.

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<sup>13</sup> Letter from Umberto Vergine, Agip's General Manager, Port Harcourt District, to the Commissioner of Police, Imo State Police Command, Owerri (2 December 1996).

The Adizua case is indicative of a process in which communities come to use violence because they are inadequately compensated for damage from oil operations and faced with irregularities in the assessment and payment of compensation. The case also suggests that a dispute between a community and a company can evolve in stages from negotiation through violence to litigation.

In general, the above discussion illustrates that litigation is part of a dynamic process involving extra-legal and legal forms of conflict. The use of litigation as opposed to extra-legal forms of disputing depends on the companies' legal liability for damage from oil operations.

## **Legal Liability for Oil Operations**

### **6.3. Basic Principles of Tort Law**

Legal disputes between village communities and oil companies are governed by the Nigerian law of torts. A Nigerian textbook on tort law by Kodilinye (1982, 1) has defined a tort as follows:

*A tort may be defined broadly as a civil wrong involving a breach of duty fixed by the law, such duty being owed to persons generally and its breach being redressible primarily by an action for damages.*



*The essential aim of the law of torts is to compensate persons harmed by the wrongful conduct of others, and the substantive law of torts consists of the rules and principles which have been developed to determine when the law will and when it will not grant redress for damage suffered. Such damage takes several different forms - such as physical injury to persons; physical damage to property; injury to reputation; and damage to economic interests. The law of torts requires every person not to cause harm to others in certain situations, and if harm is caused, the victim is entitled to sue the wrongdoer for damages by way of compensation.*

Therefore, the usual remedy for a tort is monetary compensation for damage. This fact distinguishes tort law from criminal law. If the defendant loses a case, he may have to pay compensation to the plaintiff, but will not be sentenced to imprisonment. In addition to monetary compensation under tort law, a plaintiff can seek an injunction. An injunction is a judicial order to the defendant to abstain from or to take a certain action. Whether an injunction is granted or not depends on the subject matter. In respect of oil operations in Nigeria, injunctions have sometimes been sought by plaintiffs but were virtually never granted. In *Irou v. Shell-BP*<sup>14</sup>, the judge refused to grant an injunction in favour of the plaintiff whose land, fish pond and creek had been polluted by Shell-BP. The judge explained his reasoning for not granting an injunction as follows: *'To grant the order... would amount to asking the defendant [Shell-BP] to stop operating in the area... The interest of third persons must be in some cases considered e.g. where the injunction would cause stoppage of trade or throwing out a large number of work people'*. The

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<sup>14</sup> Unreported Suit No. W/89/71, Warri HC.

judge ruled that nothing should be done to disturb the operations of the oil industry which *'is the main source of this country's revenue'*. In other words, the economic interests of the oil industry appeared to be more important to the judge than the course of justice. In *Chinda v. Shell-BP*<sup>15</sup>, the plaintiffs asked for an injunction on gas flaring. The judge rejected the request by saying: *'The Statement of Claim demands an order that Defendants [Shell-BP] refrain from operating a similar flare stack within five miles of Plaintiffs' village, an absurdly and needlessly wide demand'*.<sup>16</sup> The above judgments indicate that Nigerian courts are very reluctant to grant an injunction in oil related cases. For oil companies, this interpretation of the law by Nigerian judges is favourable because the law allows them to continue with their exploration and production activities, notwithstanding the impact of oil operations on village communities. Said Shell's legal manager, J.A.Odeleye, in 1998: *'The law is on our side because in the case of a dispute, we don't have to stop operations'*.<sup>17</sup> According to Odeleye, in early 1998 not a single injunction was in place against Shell in Nigeria.<sup>18</sup>

Seeking compensation for damage offers village communities greater prospects of success than injunctions. Oil related compensation claims in Nigeria are usually based on specific torts, notably the *'tort of negligence'*, *'tort of nuisance'* and on the rule of strict

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<sup>15</sup> (1974) 2 R.S.L.R.

<sup>16</sup> Per Holden, C.J. at page 14.

<sup>17</sup> Personal interview with J.A.Odeleye, SPDC's Legal Manager and Company Secretary (Lagos, February 1998).

<sup>18</sup> While the imposition of injunctions against oil companies is not a realistic option in Nigeria, the substantial quantity of litigation continues to constitute a problem for the oil industry and entails financial costs for the companies. As a way of avoiding litigation, oil companies could introduce less harmful practices. This would ultimately reduce the quantity of litigation because village communities would have fewer legal grounds on which to sue. But oil companies have failed to change their harmful practices despite environmental legislation (see sections three and five of the thesis).

liability. These torts can sometimes overlap in a single case. For instance, a plaintiff could plead negligence in combination with nuisance.

## 6.4. Negligence

One of the main torts applied in oil related litigation is negligence. In *Seismograph Service v. Mark*<sup>19</sup>, the plaintiff claimed compensation for damage from the destruction of his fishing nets by a seismic boat. It was impossible for the plaintiff to show that the company acted negligently. In a negligence claim, the burden of proof is on the plaintiff, not the defendant. That means, it is not enough to show that an oil company destroyed property or lives, the plaintiff must actually prove that the oil company acted negligently. In a negligence claim, a plaintiff affected by oil operations must prove that the defendant owes him a duty of care, that the duty was breached and that damage resulted from the breach of duty.<sup>20</sup> In the present case, the Court of Appeal found that the plaintiff did not establish that the oil company breached the duty of care towards him. The fact that the seismic boat tore through the fishing nets was regarded as an insufficient proof of negligence in itself. The judge said that *'the allegation that the vessel 'tore' through and carried the floaters etc. away is not by itself suggestive of excessive speed or any amount of negligence'*.<sup>21</sup> He found that the case had to be dismissed since the plaintiff had failed to provide details of a breach of duty of care towards him. Said Uwaifo, J.C.A.:

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<sup>19</sup> [1993] 7 NWLR.

<sup>20</sup> On negligence and duty of care, see e.g. Percy (1983, 10-15).

<sup>21</sup> Per Uwaifo, J.C.A. at page 212.

*In the present case, what did the defendants [Seismograph Service] do or fail to do which was the cause of the accident? Did the captain of the vessel engage in excessive speed in navigating her? Did he fail to sound the alarm or did he do so too late to signal her approach? Did the captain fail to keep a proper look out? Did he fail to slow down? Did he navigate at the time of the day he was not expected to? There is nothing to indicate as no particulars of negligence were given by the plaintiff.<sup>22</sup>*

*Seismograph Service v. Mark*<sup>23</sup> illustrates that proving negligence can be difficult in oil related litigation because of the technical nature of oil operations. The plaintiff must prove that the oil company violated against an accepted standard of behaviour. Environmental or technical standards are based on sophisticated scientific knowledge and data. For instance, the Petroleum Act provides that an oil company must adopt 'good oilfield practice'. The oil industry normally has a superior technical knowledge as compared to individual litigants. Consequently, it may often be difficult to argue that the oil company was unreasonably negligent or did not adopt accepted standards during its operations.<sup>24</sup>

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<sup>22</sup> Per Uwaifo, J.C.A. at page 214.

<sup>23</sup> [1993] 7 NWLR.

<sup>24</sup> In a number of oil related cases in Nigeria, the plaintiff won by inferring negligence without proving it. *Adhemove v. Shell-BP* Unreported Suit No. UHC 12/70, Ughelli HC is an example of such an instance. In that case, waste from an oil waste pit escaped and spread over the plaintiff's property destroying a fish pond and killing a substantial number of fish. It is not clear if the principle *res ipsa loquitur* was applied in this case (see the subsequent discussion of the rule). Unless *res ipsa loquitur* is evoked in a negligence case, the plaintiff must prove negligence. In those cases, in which a plaintiff won by inferring negligence without proving it and *res ipsa loquitur* could not be evoked, the judge did not appear to follow the correct legal procedure under the Common Law and, technically, the cases should have been dismissed. According to Percy (1983, 15), 'any failure to prove any one of these component elements [duty of care, breach of duty and resulting damage] must result in the plaintiff's action for damages being dismissed'.

In certain cases, a lawsuit based on the claim of negligence can succeed, even if the plaintiff cannot prove that the defendants breached a duty of care. The principle is called '*res ipsa loquitur*', which literally means '*the facts speak for themselves*'. In the case *Mon v. Shell-BP*<sup>25</sup>, the plaintiffs claimed compensation for damage from an oil spill. They won the case with the court justifying its decision as follows: '*Negligence on the part of defendants has been pleaded, and there is no evidence of it. None in fact is needed, for they must naturally be held responsible for the results arising from an escape of oil which they should have kept under control*'.<sup>26</sup> The plaintiffs were hence awarded compensation.

The case *Mon v. Shell-BP*<sup>27</sup> illustrates that shifting the burden of proof from the plaintiff to the defendant can improve the chances of success for village communities in oil related litigation. If the principle *res ipsa loquitur* is invoked, an oil company must prove that the oil operations constituted no harm to the plaintiffs.<sup>28</sup>

The discussion of the above cases suggests that plaintiffs in oil related cases can sue more easily for some types of damage as opposed to others. As indicated in *Seismograph Services v. Mark*, it may be difficult to prove negligence when a seismic boat destroys property.<sup>29</sup> As denoted in *Mon v. Shell-BP*<sup>30</sup>, a plaintiff may find it easier

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<sup>25</sup> (1970-1972) I R.S.L.R.

<sup>26</sup> Per Holden, C.J. at page 73.

<sup>27</sup> (1970-1972) I R.S.L.R.

<sup>28</sup> In order to rely on the principle, three conditions must be fulfilled. First, the plaintiff must prove that the accident occurred. Second, he must prove that the occurrence would not have happened '*in the ordinary course of things without negligence on the part of somebody other than the plaintiff*'. Third, the facts suggest that the defendant rather than the plaintiff was negligent. In line with the last condition, the plaintiff must usually show that the thing causing the damage was '*in the management and control of the defendant*' (Percy 1983, 350). An oil spill fulfils all three conditions of the principle *res ipsa loquitur*, as long as the plaintiff can show that the spill actually happened. An oil spill does not happen in the ordinary course of things and the oil installation is in the management of the oil company.

<sup>29</sup> It is also difficult to prove negligence as a result of gas flaring, see *Chinda v. Shell-BP* (1974) 2 R.S.L.R.

to succeed in an oil spill claim because *res ipsa loquitur* can be invoked.<sup>31</sup> If an accident such as an oil spill occurs, a court is likely to conclude that the oil company was negligent, unless the defendant company can show that the accident may have occurred without negligence on its part or on account of uncontrollable influences such as sabotage.

## 6.5. Nuisance

Another type of tort, albeit less common in oil related litigation in Nigeria, is the 'tort of nuisance'. The tort of nuisance allows the plaintiff to sue for interference with the enjoyment of his land.<sup>32</sup>

There are two types of nuisance: private nuisance and public nuisance. A case of private nuisance was *Seismograph Service v. Akporuovo*<sup>33</sup>. In that case, the plaintiff claimed that vibrations destroyed his three buildings, two outhouses and household goods in the course of seismic operations in the 1960s. The trial judge awarded damages to the plaintiff. Dissatisfied with the judgment, the company appealed to the Supreme Court. The higher court allowed the appeal and set aside the judgment of the lower court. The court found that '*the evidence of plaintiff did not establish the liability, if any, of the*

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<sup>30</sup> (1970-1972) I R.S.L.R.

<sup>31</sup> *Res ipsa loquitur* was successfully applied in a number of more recent cases involving oil spills, for instance, in *Shell v. Enoch* [1992] 8 NWLR.

<sup>32</sup> The defendant can cause an interference through vibrations, flooding, fire, noise or other forms of invasion. Nuisance is slightly different from negligence, although it can also result from negligence. The plaintiff does not generally have to prove a duty of care, but he must show that the defendant's interference was unreasonable and that the interference was serious. On the most basic level, the court may ask the question '*Is it reasonable that the plaintiff should have to put up with this interference?*'. This is different from negligence where the question is asked about the duty of care. On nuisance, see e.g. Baker (1991, chapter 15).

<sup>33</sup> (1974) All N.L.R.



*appellant company*'.<sup>34</sup> The judges argued that there was conflict of evidence as to whether the building was actually damaged. Since damage should have been proven, the trial judge should have visited the scene. The plaintiff lost the case.

Public nuisance is different from private nuisance in that public, not private, property is damaged. The plaintiff must prove that the nuisance caused damage which is particular to him. In addition, the damage must be much greater to the plaintiff than to the rest of the public. A case of public nuisance was *Amos v. Shell-BP*<sup>35</sup>, in which the Ogbia community sued Shell-BP and its subcontractor, the Niger Construction Company. The subcontractor constructed a large earth dam across a creek, which was public property. Originally, the two companies had planned to build a bridge across Kolo Creek. Instead of going ahead with the original plan, they constructed a dam to enable heavy machinery to be moved across the creek. Witnesses testified that, as a result of the construction of the dam, flooding was caused upstream and the creek dried up downstream. Farms were flooded and damaged, canoes could not bring goods to the market and the life of the community was disrupted. The defendants denied that there was flooding, claiming that water continued to flow across the dam in two pipes. They also claimed that labourers helped villagers to carry canoes across the dam night and day. The court dismissed the plaintiffs' claim, holding that '*Kolo Creek is agreed by both sides to be a public waterway. Blocking it up is a public nuisance. No individual can normally recover damages for a public nuisance. For an individual claim to succeed there must be proof of the plaintiff having suffered special damage peculiar to himself from*

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<sup>34</sup> Per Sowemimo, J.S.C. at page 106.

<sup>35</sup> 4 E.C.S.L.R.



*interference with a public right*'.<sup>36</sup> In addition, the court ruled that the plaintiffs should have filed separate lawsuits since they had suffered separate losses. The plaintiffs had no right to sue as a community, since the losses were considered individual, not communal.

The two above cases suggest that a plaintiff's success in a lawsuit based on nuisance is uncertain. It appears, however, that those affected by oil operations are more likely to succeed on the basis of private nuisance claims. The plaintiffs in *Seismograph Service v. Akporuovo*<sup>37</sup> lost the case because of conflicting evidence. Otherwise, their claim would have been held valid. The plaintiffs in *Amos v. Shell*<sup>38</sup> lost because the nature of the claim itself was considered invalid. The main problem with public nuisance is that it has often relied on the goodwill of the executive branch of the government. In theory, the Nigerian Constitution provides that judicial power extends to every type of legal action except those specifically excluded by the Constitution itself.<sup>39</sup> In practice, in a public nuisance case, the attorney-general as the representative of the public is expected to sue the defendants rather than an unlimited number of private individuals, which has an understandable rationale behind it. In the case *Amos v. Shell*<sup>40</sup>, the attorney-general (as a representative of the government and the public) rather than the plaintiffs should have pressed charges against Shell. The main problem in Nigeria is that the government was reluctant to act on behalf of those affected by oil operations.

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<sup>36</sup> Per Holden, C.J. at page 488.

<sup>37</sup> (1974) All N.L.R.

<sup>38</sup> 4 E.C.S.L.R.

<sup>39</sup> Constitution of the Federal Republic of Nigeria 1979, section 6(6b).

<sup>40</sup> 4 E.C.S.L.R.

## 6.6. Strict Liability

Apart from the torts of negligence and nuisance, a plaintiff can rely on the rule of strict liability in *Rylands v. Fletcher*.<sup>41</sup> Until the introduction of strict liability in the 19th century, tort law limited liability to those cases where the defendant was at fault. Under the rule of strict liability, the defendant is liable for damage from his activities, even if he was not at fault and if there was no negligence on his part.

In *Umudje v. Shell-BP*<sup>42</sup>, the plaintiffs were awarded compensation based on the rule of strict liability. In that case, the plaintiffs sued Shell-BP for damage resulting from an oil waste pit and the construction of a road. The oil company constructed a road across a waterway and failed to insert enough culverts under it. At the location of the road, fish previously moved across the land into the plaintiffs' artificial ponds and lakes during the rainy season. After the road construction, fish could no longer move across. While accepting those facts, the Supreme Court, however, found that Shell-BP was not liable under the rule of strict liability. The judge explained his reasoning as follows:

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<sup>41</sup> The legal rule was expressed by the British House of Lords in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330 as follows:

*We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape.*

The judgment in *Rylands v. Fletcher* laid down the rule for strict liability. Four conditions must be fulfilled for the rule to apply. First, the defendant must have brought the thing on his land for his own use. Second, the thing must be likely to cause harm if it escapes. Third, the defendant's use of the land must be non-natural, for instance, sewage or gas come under the rule, while weeds or flood water are natural things and do not come under the rule. Fourthly, the thing must actually escape. On the principles of strict liability, see Baker (1991, chapter 16). An escape of crude oil or oily waste fulfils all the above four conditions. Accordingly, any dangerous incident involving crude oil can be potentially prosecuted. The defendant is strictly liable for damage, which removes the plaintiff's burden of proof. It is not necessary for the plaintiff to prove any negligence or breach of duty of care.

<sup>42</sup> 5 E.C.S.L.R.

*There is no doubt that the appellants would be liable under the rule in Rylands v. Fletcher for damage arising from their interference with the natural flow of the Utefe stream and water from Ewu river into Unenurhie land had the judge found that the blockade [sic] caused by the access road resulted in the flooding of the Unenurhie land, together with the ponds and lakes therein; for liability under the rule does not arise unless there was an 'escape' of the dangerous substance from a place in the occupation, or control, of the defendant to another place which is outside his occupation or control... The position here... is that the access road blocked the flow of water through the waterway or channel and in consequence definitely starved the Unenurhie land... The award of damages, so far as they relate to the appellants' act in constructing the access road cannot, therefore, be sustained under the rule in Rylands v. Fletcher.*<sup>43</sup>

In other words, the rule in *Rylands v. Fletcher*<sup>44</sup> did not apply in this case because the court found that the blockage of the stream did not cause flooding but merely starvation of water and fish. If there had been an escape of water from the company's land rather than starvation of water, the rule of strict liability would have applied. For the courts, an escape of a substance is hence a necessary condition for the rule in *Rylands v. Fletcher*<sup>45</sup> to apply.

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<sup>43</sup> Per Idigbe, J.S.C. at pages 572-573.

<sup>44</sup> (1868) L.R. 3 H.L. 330.

<sup>45</sup> (1868) L.R. 3 H.L. 330.

While strict liability did not apply in respect of the road construction, the court found that the rule of negligence applied. Shell-BP was found guilty of negligence for the blockage of the stream because it failed to insert enough culverts under the road, which caused damage. The Supreme Court ruled that *'the five culverts under the access road'* were *'inadequate'* and this *'inadequacy caused the blockade [sic]'* and therefore amounted to negligence.<sup>46</sup>

While the rule in *Rylands v. Fletcher*<sup>47</sup> did not apply to the road construction, it applied in respect of Shell-BP's oil waste pit. When the pit was full, the waste spread over the plaintiffs' farms, ponds and lakes, damaging the land and killing a substantial quantity of fish. Said Idigbe, J.S.C.:

*Liability on the part of an owner or the person in control of an oil-waste pit, such as the one located at Location 'E' in the case in hand, exists under the rule in Rylands v. Fletcher although the 'escape' has not occurred as a result of negligence on his part.*<sup>48</sup>

The Umudje case exemplifies the differences in the application of the rule of strict liability and the rule of negligence.<sup>49</sup> In respect of the oil waste pit, the rule of strict liability applied but the rule of negligence did not. In contrast, in respect of the road construction, strict liability did not apply but the rule of negligence did. The Supreme Court consequently dismissed the appeal by Shell-BP.

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<sup>46</sup> Per Idigbe, J.S.C. at page 573.

<sup>47</sup> (1868) L.R. 3 H.L. 330.

<sup>48</sup> Per Idigbe, J.S.C. at page 573.

<sup>49</sup> This insight was assisted by a discussion of the Umudje case in Kodilinye (1982, 116-117).

The Umudje case illustrates that the legal rule of strict liability in *Rylands v. Fletcher*<sup>50</sup> can increase a plaintiff's chances of success in an oil related case because it requires merely the proof of the escape of oil or waste rather than the proof of negligence by the tortfeasor.<sup>51</sup> However, the case also exemplifies some of the limitations of the rule of strict liability in oil related cases. The Supreme Court found on appeal that the strict liability rule applied in relation to the escape of waste from an oil waste pit, but did not apply in relation to the road construction. In wider terms, incidents such as explosions in the course of a seismic survey or the destruction of fishing nets by a seismic boat would also not be included under the rule.

The most important limitations of strict liability are posed by the various exceptions to the rule. Strict liability does not apply if the damage was due to: an 'act of God'; a default of the plaintiff; the consent of the plaintiff; statutory authority; or an act of a stranger (Kodilinye 1982, 117-121).<sup>52</sup> In Nigeria, oil companies have often alleged that damage from oil operations is due to sabotage, which is considered an act of a stranger. If the oil company can convince the court that sabotage was the cause of damage, it is not liable to pay compensation to the plaintiffs.

By pleading sabotage, oil companies have won a number of lawsuits. In *Shell v. Otoko*<sup>53</sup>, a number of communities in Rivers State sued Shell for damage from an oil spill in October 1981, which polluted the Andoni River and creeks. Shell claimed that the spill

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<sup>50</sup> (1868) L.R. 3 H.L. 330.

<sup>51</sup> Strict liability was successfully applied in a number of more recent cases involving oil spills, for instance, in *Shell v. Tiebo VII* [1996] 4 NWLR and *Shell v. Isaiah* [1997] 6 NWLR.

<sup>52</sup> An act of a stranger may also be called an 'independent act of a third party' (on limitations of strict liability, see also Percy 1983, 855-866).

<sup>53</sup> [1990] 6 NWLR.

was due to sabotage. The company's evidence of sabotage was dismissed by the lower court, but was allowed by the Court of Appeal. The appeal judge felt that the evidence of the plaintiffs supported the company's evidence. One of the plaintiff's witnesses testified that *'there was nothing else done again by the defendant company [Shell] to control the spillage apart from the corking of the manifold'*.<sup>54</sup> The judge concluded on the basis of this and other evidence that a screw or a bolt was removed by a *'third party'*, which caused the oil spill.

However, oil companies have not always succeeded in blaming oil spills on sabotage. In *Shell v. Enoch*<sup>55</sup>, the Mumaija community in Rivers State sued Shell for damage as a result of an oil spill. Shell claimed that the spillage was caused *'by the malicious act of third persons'*. Said the trial judge:

*It is clear here that the plaintiffs had shown that there was an explosion at the defendant's manifold and that there was crude oil spillage which was extensive as a result of that explosion. There were extensive damages to economic crops, farm lands, yams, cocoyams, and so on. There was evidence that no third party caused the explosion, and that no one in the community did it.*<sup>56</sup>

In another recent case *Shell v. Isaiah*<sup>57</sup>, Shell also claimed that sabotage was involved. The Court of Appeal concluded that *'the defence of sabotage was an afterthought'* and dismissed Shell's appeal accordingly.<sup>58</sup>

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<sup>54</sup> Per Omosun, J.C.A. at page 715.

<sup>55</sup> [1992] 8 NWLR.

<sup>56</sup> Per Jacks, J.C.A. at page 341.

<sup>57</sup> [1997] 6 NWLR.

Oil company allegations of sabotage often lack in merit or may be the result of exaggerations.<sup>59</sup> While vandalism of oil pipelines may occasionally occur in Nigeria, oil companies have an economic self-interest in claiming sabotage in court as they can escape the legal liability for damage.<sup>60</sup>

To sum up, the above discussion suggests that tort law has limitations as far as the claims of village communities against oil companies are concerned. The rules of negligence, nuisance and strict liability offer a legal remedy for plaintiffs suing oil companies but each legal rule imposes specific limitations on the plaintiffs' ability to sue. Even if a plaintiff can invoke a particular rule of tort law, oil companies can apply a number of standard legal defences in court.

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<sup>58</sup> Per Katsina-Alu, J.C.A. at page 252. Another recent case was *Anare v. Shell* Unreported Suit No. HCB/35/89, in which four village communities sued Shell over oil spills in the 1980s. Shell claimed that the oil spills were caused by sabotage. The court, however, disbelieved Shell's witnesses and awarded over 30 million Naira in compensation to the plaintiffs. Shell appealed against the decision. By claiming sabotage, the company can save up to 30 million Naira in a single lawsuit.

<sup>59</sup> Secondary sources provide strong indications that oil companies used claims of sabotage to avoid compensation payments to local communities in the past. S.K. Igbara of the Ahmadu Bello University in Zaria carried out an independent investigation into the causes of accidents at Shell's Afam 17 C and T wells in 1975 and at Bomu in 1973 (Ogbonna 1979, 254). With respect to the blow-out of the wellhead at Affam, Shell claimed sabotage. Evidence provided by some of the technicians at work revealed that negligence was the cause. Further evidence is provided by a recent confidential report commissioned for the Shell-initiated Niger Delta Environmental Survey (NDES) and prepared by the Anpez Environmental Law Centre in Port Harcourt. It stated that *'Many operators have hidden under the cloak of sabotage to avoid remediation in cases of environmental spills, accidents and discharges'* (Ogbnigwe 1996).

<sup>60</sup> Interestingly, companies claim sabotage in court, but usually fail to take any action against suspected saboteurs. Adewale (1990), who has argued that sabotage is an important problem in Nigeria, has pointed out herself that, under Nigerian law, sabotage of oil installations can be punished by death. But there appear to have been virtually no instances in which saboteurs were tried for sabotage. Oil companies have usually not pressed charges for alleged sabotage.



## General Legal Defences of Oil Companies

### 6.7. Statutes of Limitation

The above discussion has only explained legal defences, which oil company lawyers can invoke in court, as far as they relate directly to a specific type of tort. The defendants can also employ various general legal defences. From a preliminary analysis of oil related cases in Nigeria, one can distinguish at least three general legal defences: statutes of limitation, admissibility of scientific evidence, and misjoinder of parties, which are discussed below.

Statutes of limitation are laws which bar a lawsuit after a designated period of time. Many lawsuits against oil companies are barred by legislation. In this context, the most important Nigerian statute is the Nigerian National Petroleum Corporation (NNPC) Act 1977. The Act provides that no lawsuit against the NNPC, a member of its Board or any employee *'shall be instituted in any court unless it is commenced within twelve months next after the act, neglect or default complained of or, in the case of a continuance of damage or injury, within twelve months next after the ceasing thereof'*.<sup>61</sup> As a result, any lawsuits against the NNPC are statute barred after twelve months. That means, if a community or family does not file a lawsuit against the NNPC within twelve months, it cannot claim any compensation for damage.

In the case *Eboigbe v. NNPC*<sup>62</sup>, John Eboigbe sued the NNPC for damages on behalf of his family in Bendel State. He claimed that the NNPC destroyed trees and crops

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<sup>61</sup> NNPC Act, section 12(1).

<sup>62</sup> (1994) 10 KLR.

in the course of laying oil pipelines in February 1979. The NNPC allegedly bulldozed and destroyed a large part of his family's farms, which John Eboigbe was unaware of at the time. He claimed to have travelled to Northern Nigeria in 1979 where he stayed until July 1983. On his return, he learnt for the first time about the damage. He claimed that his family did not institute any court proceedings against the NNPC earlier because five out of six family members were illiterate and were hence ignorant of their legal rights. John Eboigbe took up the matter and wrote to the NNPC in July 1983 informing them of the damage. He exchanged letters with the NNPC until April 1984. The corporation did not admit liability. In a letter dated 1 February 1984, the NNPC told the plaintiffs that they would not pay any compensation because the claim was '*not convincing*'. In a letter dated 9 March 1984, they wrote that '*In the absence of any more facts we are regarding the matter as closed*'.<sup>63</sup>

In June 1985, John Eboigbe instituted a lawsuit against the NNPC demanding compensation. The NNPC won the court case by claiming that it was statute barred. The Supreme Court held unanimously that '*time begins to run from the date that the cause of action accrues*'.<sup>64</sup> Accordingly, Eboigbe should have instituted a court case within twelve months of the damages to his family land in February 1979 by the NNPC. Notwithstanding any other legal rights or social problems involved, plaintiffs have no rights in respect of damage by the NNPC unless they act quickly. The twelve months provision of the NNPC Act can partly explain why little litigation has arisen against the NNPC for damage arising from oil operations.

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<sup>63</sup> Quoted per Adio, J.S.C. at page 78.

<sup>64</sup> Per Adio, J.S.C. at page 75.

Lawsuits against other oil companies must also be filed within a certain period of time. Apart from the NNPC Act, there are general statutes of limitation which tend to limit the period for instituting a lawsuit to six years from the date on which the cause of grievance accrues.<sup>65</sup> In most types of litigation, these statutes serve justice because they protect the individual defendant from old claims<sup>66</sup> and impose some finality on compensation claims. In oil related litigation in Nigeria, they impede justice because of problems such as difficulties in obtaining access to courts and a latency period.<sup>67</sup>

As we have previously suggested, the villagers' access to courts is hampered by a number of factors (see section four of the thesis). If a plaintiff is illiterate or if there is no nearby court, a lawsuit may be delayed for a long time until he receives correct legal advice or collects the necessary funds to file a suit. In the meantime, the lawsuit may become statute barred. Courts do not accept excuses such as illiteracy. Said Edozie, J.C.A. in *Shell v. Farah*<sup>68</sup>:

*The period of limitation begins to run from the date on which the cause of action accrued. It is immaterial that a party was absent from the jurisdiction or that there was no court within the jurisdiction to entertain the claim. Similarly, illiteracy will also not avail a plaintiff because ignorance of the law is no excuse.*<sup>69</sup>

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<sup>65</sup> On statutes of limitation in general, see e.g. Baker (1991, 436-437). The six year period of limitation was confirmed by Kolawole, J.C.A. in *Nwadiaro v. Shell* [1990] 5 NWLR.

<sup>66</sup> The lawyer commonly uses the term 'stale claim'.

<sup>67</sup> The problems of the latency period and scientific uncertainty in relation to court cases involving environmental damage are explained in general terms in Eggen (1995, 5-8).

<sup>68</sup> [1995] 3 NWLR.

<sup>69</sup> Per Edozie, J.C.A. at page 185.

Even if the plaintiffs have enough funds and are aware of their legal rights, a legal claim may become statute barred because of the latency period. The full effects of oil operations are not always immediately apparent. Damage such as long-term soil degradation requires a latency period for its development. The injury may not be immediately visible or may go undiscovered for a period of time. Conducting proper scientific studies may take many years to assess changes in vegetation or soil fertility, some of which can only be observed in the long-term. Because of the long latency period, potential litigants may not always have enough time to file a suit within the statutory period of limitation.

The statutes of limitation in Nigeria do not take account of the delay between economic activities and their long-term effects, although judges seem to be aware of the problem. In *Horsfall v. Shell-BP*<sup>70</sup>, the judge stated that '*the cause of action accrues at the time of the negligence because it is then that the damage is caused, even though its consequences may not be apparent until later*'.<sup>71</sup> While judges may recognise some of the constraints posed by statutes of limitation, statutory limitations remain in place.

## 6.8. Admissibility of Scientific Evidence

In addition to problems posed by statutes of limitation, plaintiffs face the problem of the admissibility of scientific evidence. In any type of tort - negligence, nuisance and strict liability, the key problem is that of credible evidence. As a practical matter, since plaintiffs usually bear the burden of proof in oil related litigation in Nigeria, providing

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<sup>70</sup> (1974) 2 R.S.L.R.

<sup>71</sup> Per Wai-Ogosu, J. at page 131.

scientific evidence in court is more difficult for village communities than for oil companies.

In *Shell v. Otoko*<sup>72</sup>, the plaintiffs sued Shell for damage from an oil spill in 1981. Among other things, the judge doubted the plaintiffs' evidence of causation. The scientific report tendered in court by the plaintiffs was based on sediments and water samples taken in 1983. It was not clear to what extent the damage was caused by the oil spill of 1981. In the Court of Appeal, said the judge: *'There were spillages in 1980 and 1983. The question that invariably arises, is what spillage, that of 1980, 1981 and 1983 did Exhibit 'D' cover?'*<sup>73</sup> In other words, it was not possible to establish to what extent the spill in 1981 caused the injury complained of or other factors, such as other spills. Ironically, the frequent occurrence of oil spills in the area could be exploited by oil company lawyers to frustrate the plaintiffs' evidence in respect of damage.

In *Ogiale v. Shell*<sup>74</sup>, Shell was sued by the Olomoro Isoko community in Delta State. The plaintiff sued the defendants under the rule in *Rylands v. Fletcher*<sup>75</sup>, nuisance as well as negligence. Nsofor, J.C.A. said that *'it was an issue of causation and consequential damage or liability. And the law, as I comprehend it, is that he who asserts ought to prove his assertion and this by credible evidence'*.<sup>76</sup> The plaintiffs could not prove the causation between oil operations and reduced soil fertility. The court dismissed the testimonies of the plaintiffs' witnesses as well as the experts. According to

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<sup>72</sup> [1990] 6 NWLR.

<sup>73</sup> Per Omosun, J.C.A. at page 718.

<sup>74</sup> [1997] 1 NWLR.

<sup>75</sup> (1868) L.R. 3 H.L. 330.

<sup>76</sup> Per Nsofor, J.C.A. at page 180.

the judge, the testimonies of the witnesses amounted to a mere '*ocular inspection and comparism [sic]*'.<sup>77</sup> The testimonies of the experts were not admitted because the court doubted their skills and expertise. Dr. A.U. Salami, chief scientific expert for the plaintiffs, had specialist knowledge as a soil scientist and an agronomist. His testimony was not considered credible as he did not have additional knowledge of radiation and heat. According to Nigerian law, an expert must be specially skilled in the particular field in question.<sup>78</sup>

The court also doubted the evidence of Chief Birinengi Idoniboye-Obu, an environmental consultant. Said Akintan, J.C.A.:

*He said his team visited the place several times and wrote a report, admitted as Exhibit D. The witness said that he carried out scientific investigation of water in Olomoro. But he admitted under cross-examination that he did not do a quantitative analysis of water samples because of lack of funds for such investigation. He also admitted that such laboratory analysis could have shown the chemical contents of the water or other chemicals in the water. He also admitted that he did not carry out a scientific laboratory test of the air and heat radiation in Olomoro before arriving at the conclusions he set out in his report, Exhibit D.*<sup>79</sup>

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<sup>77</sup> Per Nsofor, J.C.A. at page 182.

<sup>78</sup> The rule was firmly established in *Seismograph Service v. Onokpasa* (1972) 1 All N.L.R. (Part 1) where the Supreme Court ruled that the correct test for the relevance of the witness's opinion as that of an expert is whether he or she is specially skilled in the particular scientific subject matter.

<sup>79</sup> Per Akintan, J.C.A. at pages 159-160.

As indicated by the expert witness, scientific analysis requires financial resources. In the present case, the plaintiffs did not have sufficient funds to afford a major scientific inquiry. Interestingly, Shell's defence witnesses did not conduct strict scientific analyses either. Shell hired Professor C.T.I. Odu, a professor of agronomy at the University of Ibadan, to study the Olomoro field area in 1983. Akintan, J.C.A. commented in the court judgment:

*The witness admitted under cross-examination that crops would not grow successfully where oil content is high. But he said he did not compare crop yield in Evwreni with crop yield in Olomoro. He said further that the opinion expressed on page 53 of their report, Exhibit G, about oil contents in soil was based on what he (the witness) was told by one Yomi Odewumi.*<sup>80</sup>

Therefore, the quality of the scientific expert analysis did not appear to be much better for the defendant than for the plaintiffs. However, the weakness of the company's expert analysis did not assist the plaintiffs' case as the burden of proof was on the plaintiffs, not the defendants. According to Nsofor, J.C.A., *'the claimant ought to prove his case relying on the strength of his case and not on the weakness of the defendant's case'*.<sup>81</sup> Accordingly, the defendant had an advantage in terms of evidence. The plaintiffs lost in the lower court based on the judge's conclusion that they failed to prove their claim. The plaintiffs' appeal was dismissed by the Court of Appeal.

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<sup>80</sup> Per Akintan, J.C.A. at page 161.

<sup>81</sup> Per Nsofor, J.C.A. at age 180.



The Otoko and Ogiale cases exemplify some of the problems posed by the possibility that there are multiple causes of the same injury. In addition, they indicate that village communities may find it more difficult to provide scientific evidence than oil companies because the burden of proof is on them.

Even if a plaintiff can prove that oil operations caused an injury, the plaintiff must also provide strict proof of 'special damages', that means, evidence of damage to specific crops, trees, buildings and other objects. The plaintiff cannot simply allege that oil operations resulted in destruction of trees or buildings. In *Shell v. Otoko*<sup>82</sup> mentioned earlier, the appeal judge dismissed the compensation award of the lower court. Among other things, the lower court awarded 30,000 Naira in respect of damaged juju shrines.<sup>83</sup> On appeal, the judge ruled that the damage to the juju shrines should have been strictly proven. Said Omosun, J.C.A.:

*It is not clear to me on what basis this award was made. There was no scrap of evidence what constituted the desecration or defilement. Is it the mere touching of the oil to the juju figures that causes desecration? One would like to know. The juju priests of the shrines would be the ones best suited to lead such evidence and for them to say whether the 15,000 Naira would be for the appeasement and purification of the juju.*<sup>84</sup>

In the same case, the lower court also awarded 30,000 Naira in respect of fishing nets. The appeal judge ruled that the damages were not strictly proven. The judge found

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<sup>82</sup> [1990] 6 NWLR.

<sup>83</sup> A juju shrine is a sacred religious place worshipped by Nigeria's Animist communities.

<sup>84</sup> Per Omosun, J.C.A. at page 720.

that the plaintiffs failed to prove that the nets were in the water at the time of the oil spill, that the oil spill made the nets unsuitable, where the nets were kept after the oil spill, and what the costs of the nets were. The valuer, who prepared the valuation report for the plaintiffs, was not considered competent by the court because he had no specialist knowledge of the different areas of expertise. Said the judge: *'Plaintiffs' Witness 5 [expert valuer] is not competent to offer his opinion as to the chemical composition of the oil and its effect on the nets'*.<sup>85</sup> In respect to the juju shrines, said the judge: *'He [expert valuer] is not an expert in juju shrines and the art of worship of juju, their discretion and purification or appeasement'*.<sup>86</sup> In order to prove all special damages in the Otoko case, the plaintiffs would have needed separate experts in juju worship, chemical engineering, land management and agriculture. If the plaintiffs decided to hire all those various experts, the financial cost of expert valuations would have been significantly more substantial indeed.

The Otoko and Ogiale cases indicated that a frequent problem village communities face is that of establishing a causal link between oil operations and the suffered injury. Even scientific studies may not always be entirely conclusive. For instance, it is often not entirely clear whether soil degradation is the result of oil operations or other factors such as intensive farming. As a consequence, it is often impossible to determine the extent to which the damage arose from oil operations and the extent to which it would have occurred in any case. Oil companies can thus use the

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<sup>85</sup> Per Omosun, J.C.A. at page 721.

<sup>86</sup> Per Omosun, J.C.A. at page 720.

argument of scientific uncertainty and causation as a standard legal strategy to defend a case in court.

## 6.9. Misjoinder of Parties and Causes of Action

In addition to the defences based on statutory limitation and admissibility of evidence, oil companies can undermine the plaintiff's so-called '*locus standi*'. To initiate a lawsuit, the plaintiff must have a *locus standi*, which literally means '*standing to sue*'.<sup>87</sup> The plaintiff must have either a special legal right to sue, or a personal interest in the lawsuit, or his interest must have been adversely affected, for instance, if personal property was damaged during oil operations. A judge usually decides on a case-by-case basis, if the plaintiff has a *locus standi*. A lawsuit may not be allowed, if the judge thinks that different plaintiffs in the same lawsuit suffered separate damage, which is called '*misjoinder of parties and causes of action*'. That means, the plaintiffs cannot sue jointly because their grievances were separate and specific to each individual. In such a case, the different plaintiffs must sue separately in separate lawsuits.

In *Horsfall v. Shell-BP*<sup>88</sup>, the community sued Shell-BP as the first defendant and Seismograph Services as the second defendant for damage to '*private buildings, communal buildings, churches inclusive*'.<sup>89</sup> The lawyers of Shell-BP claimed a misjoinder of parties and causes of action. The company argued that the plaintiffs should not sue jointly because the different buildings belonged to different individuals, not to the

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<sup>87</sup> On some problems in the enforcement of *locus standi* in Nigeria, see Ogowewo (1995).

<sup>88</sup> (1974) 2 R.S.L.R.

<sup>89</sup> Per Wai-Ogosu, J. at page 128.

village as a whole. The trial judge concurred by stating that *'it was only the town hall that could be owned by the whole village'*.<sup>90</sup> In his view, even the claims for damage to churches should have been brought to court by registered trustees, not the community representatives. Interestingly, the judge seemed annoyed that the company filed a motion of misjoinder even before the plaintiffs had a chance to prove their allegations in court. Said the judge: *'The very pleading of the defendants [Shell-BP] here, in my opinion, envisaged this, and it was a mere gamble to bring up a separate motion for this'*.<sup>91</sup> The company lawyers used a standard legal strategy as a defence, without drafting a specific legal defence for the case. It would appear that oil companies have used the issue of misjoinder as a legal technicality to frustrate compensation claims by communities.

The company defences based on misjoinder succeeded in a number of recent cases such as in *Shell v. Enoch*<sup>92</sup>, in which the Mumaija Community in Rivers State sued Shell for damage resulting from an oil spill. The plaintiffs testified that the explosion of an oil pipeline resulted in an oil spill. As a result, five children died from drinking polluted water, farm lands were damaged and property was destroyed including crops and fishing nets. Shell claimed misjoinder of parties and causes of action. The trial judge in the Bori Division of the Rivers State High Court agreed with Shell that individual and communal claims were lumped together and, therefore, the community lawsuit could not succeed. He held that each member of the community should have started a lawsuit by himself for specific damages, while the community should also have started a lawsuit on behalf of

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<sup>90</sup> Per Wai-Ogosu, J. at page 129.

<sup>91</sup> Per Wai-Ogosu, J. at page 131.

<sup>92</sup> [1992] 8 NWLR.

communal issues. Said the trial judge: *'The estate or next friend of these children who died have their own personal action for the compensation and not the community'*.<sup>93</sup> He ordered a so-called '*non-suit*' but did not strike out the case. Shell's lawyers were dissatisfied with the judgment and appealed to the Court of Appeal asking for the court to dismiss the case. The difference is that, under a non-suit, members of the community could again sue Shell in court for the same damage, this time as individual plaintiffs, not as the community. In contrast, a dismissal of the case would mean that members of the community were not allowed to go back to court again. The Court of Appeal confirmed the earlier judgment and ordered a non-suit.

A striking feature of the case is that the trial judge had no doubt that Shell had caused major damage to the community. The plaintiffs' scientific evidence was admitted by the court. Said Edozie, J.C.A.:

*There was unchallenged and credible evidence that the appellant's oil pipeline exploded and the oil spillage therefore caused extensive damage to the respondent community. To that extent, the respondent's claim in negligence did not fail to warrant dismissal. They were however not entitled to judgment, for, as the appellants successfully pleaded and contended, the action was bad for misjoinder of parties and cause of action. In the circumstances, the proper order which meets the justice of the case is a non-suit.*<sup>94</sup>

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<sup>93</sup> BHC/2/83, quoted in *Shell v. Enoch* [1992] 8 NWLR.

<sup>94</sup> Per Edozie, J.C.A. at page 346.

The Court of Appeal judges were trying to do justice to both sides. Said Jacks J.C.A.: *'There are circumstances in which it would be proper for a trial court to non-suit the plaintiff instead of dismissing his claim in the interest of justice to both parties'*.<sup>95</sup> However, the order of a non-suit destroyed an otherwise credible claim by the community. The key problem in this and in other similar cases is that English Law does not take full notice of communal issues in Africa. Nigerian lawyers have tended to be reluctant to depart from the established English Law even though they recognise the problem. Said the judge in *Shell v. Enoch*<sup>96</sup>: *'In my view there would be a grave injustice if the respondents' case was dismissed with the resultant effect of denying the community and the various individuals [sic] of re-litigating their claims in separate and properly constituting actions'*.<sup>97</sup> But the key problem with the above reasoning is that the individuals are less likely to be able to afford separate litigation. The community as a whole may afford a court action but not necessarily an individual villager. Therefore, the judgment of non-suit favours the oil companies, contrary to the intention of the court to do justice to both sides. By claiming misjoinder of parties, oil companies have often escaped liability for compensation payments to those adversely affected by oil operations.

Oil companies have not always succeeded in pleading misjoinder. In *Mon v. Shell-BP*<sup>98</sup>, the plaintiffs claimed compensation for damage from an oil spill. The plaintiffs testified that oil destroyed their joint fishponds. Lawyers of Shell-BP claimed that the different plaintiffs should sue the company separately, not jointly. The court found that

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<sup>95</sup> Per Jacks, J.C.A. at page 344.

<sup>96</sup> [1992] 8 NWLR.

<sup>97</sup> Per Jacks, J.C.A. at page 345.

<sup>98</sup> (1970-1972) 1 R.S.L.R.

the plaintiffs were working together '*in a loose sort of partnership*'.<sup>99</sup> Having obtained advice from the Ministry of Agriculture, they jointly initiated a scheme to breed fish in fishponds for sale. Said the judge: '*On the evidence I am satisfied that each had contributed work or money or both to the jointly needed channel, and that they intended to share the profits in due time. Therefore it is proper that they should sue jointly*'.<sup>100</sup> However, the case *Mon v. Shell-BP*<sup>101</sup> is somewhat exceptional since it involved a new form of partnership. The judge made it clear that a community could not sue jointly in respect of the damaged fishponds. The rationale behind the decision was as follows: '*If plaintiffs had erected fishtraps in the creeks there and those traps had been damaged by oil, then they would have been entitled to compensation as individuals in just the same way as many others were, including some of the witnesses before me*'.<sup>102</sup> Although the land was communal, the fishtraps were individually owned.

The above cases suggest that, under normal circumstances, a community cannot sue jointly on behalf of individual property. It appears that a community can sue jointly on behalf of communal land or buildings. But it cannot sue jointly for damage to individual property such as trees, fishtraps or houses. This partly mirrors customary law, under which land does not include things growing or attached to the soil, including trees or buildings. Nevertheless, court judgments do not entirely take account of customary law. As Obi (1963, 94 and 98) has pointed out, among the Ibo, fishing lakes and ponds, as well as trees growing wild on communal reserve land are usually communally, not

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<sup>99</sup> Per Holden, C.J. at page 72.

<sup>100</sup> Per Holden, C.J. at page 73.

<sup>101</sup> (1970-1972) I R.S.L.R.

<sup>102</sup> Per Holden, C.J. at page 73.



individually, owned. On farmland, trees growing wild are treated as communal, as long as the land lies fallow. Where the farmland is under cultivation, the individuals who farm the area have exclusive rights over the trees. Under customary law, trees grown on individual landholdings generally belong to the individuals who farm the land. However, among the Ngwa, palm trees growing on 'private' land were open to communal use for certain periods of the year (Obi 1963, 94 and 98). From the analysis of oil related litigation in Nigeria, it appears that courts may have sometimes failed to take notice of those distinctions in customary rights.

On the whole, the above discussion has indicated that oil companies have at their disposal a wide range of general legal defences, which they can use in oil related litigation. Companies can rely on statutes of limitation, plaintiff's problems in providing evidence and the rule of misjoinder of parties and causes of action. In addition, it has to be remembered that oil companies have superior financial and technical resources as compared to village communities. They are hence more likely to provide superior expertise in court. This places a limitation on justice for village communities in lawsuits against oil companies. Yet the fact that the quantity of litigation against oil companies and the quantum of compensation awards have increased would suggest that there has been legal transformation in oil related cases which has lessened the limitation on justice for village communities.

# Legal Transformation in Oil Related Cases

## 6.10. Locus Standi

The principles of legal liability under tort law and the legal defences employed by oil companies have not changed fundamentally since Nigeria's independence in 1960. Nonetheless, our analysis of the court judgments indicates that, by the early 1990s, there had been a measure of legal transformation in the judicial interpretation of a number of legal rules which resulted in more favourable conditions for compensation claims by village communities. From a preliminary analysis of Nigerian litigation, one can distinguish at least three main legal changes: a broadening of the *locus standi*, a relaxation of evidence rules, and a broadening of compensation awards, which are analysed below.<sup>103</sup>

<sup>103</sup> These findings were, to a large extent, confirmed by a personal interview with M.B. Belgore, Chief Justice of the Federal High Court (Lagos, March 1998). Belgore was asked if he agreed with the author whether the three areas of law mentioned above have undergone any changes. On compensation awards, Belgore said:

*The law has changed because the law is more robust in awarding compensation now than it was before. This is very important where people bring evidence that their livelihood has been much affected. Some of them are farmers and the oil has poured on the area where they farm. Some of them are fishermen and they can't fish again. Of course, the law has to give them enough compensation, either to give them an alternative mode of livelihood or an alternative method of living a decent life. Therefore, on the issue of compensation, compensation is now more robust than it used to be. The damage is assessed more than before.*

On evidence by experts, Belgore said:

*An expert is someone who knows the conditions, what it was before, what it is now. He need not to be a scientific person. For instance, a hand-writing expert may be somebody who is familiar with the hand-writing of Mr. X for a long time, when he looks at it, he is an expert, he doesn't need to go to any scientific school before becoming an expert. To that extent, the court now filled the issue of an expert with a broader sense than before in the definition of the word 'expert' because one has to do justice. Don't forget that most of these rural communities cannot afford a geologist, a soil expert etc. They may have someone who knows the conditions and who can explain things and we accept it.*

This definition of an expert is quite different from the definition of the Supreme Court in *Seismograph Service v. Onokpasa* (1972) 1 All N.L.R. (Part 1) (see footnote 68). On *locus standi*, Belgore stated:

*We [Nigerian judges] are a little more liberal about locus standi. I had one or two cases, in which you have somebody from the community. He must be a member of that community but he may not necessarily be resident. If he is a member of that community, that gives him enough standing to issue a writ on behalf of the community.*

A broadening of the *locus standi* has the potential of fundamentally changing the nature of oil related litigation in Nigeria. In *Adediran v. Interland Transport*<sup>104</sup>, the Nigerian Supreme Court broadened the scope of *locus standi* in terms of the so-called public right to sue. In that case, residents of a housing estate formed a housing association. The housing association filed a suit against Interland Transport, a transport firm with nearby offices. Interland Transport used its premises as a workshop and for parking trailers. The plaintiffs complained against the traffic of the trailers, which blocked the access roads to the estate, knocked down electric poles, damaged the roads and generated noise.

In the *Adediran* case, the court ruled that the nuisance caused by Interland Transport was private not public. But the Supreme Court considered the nature of *locus standi* in public nuisance in general terms. Until the *Adediran* case, in matters of public interest litigation the old rule was that only the Attorney-General could bring court action to protect a public right. The *Adediran* case has changed this state of affairs. Karibi-Whyte, J.S.C. pronounced: '*The restriction imposed at common law on the right of action in public nuisance is inconsistent with the provisions of section 6(6)(b) of the Constitution, 1979 and to that extent is void*'.<sup>105</sup> Karibi-Whyte, J.S.C. further stated:

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These findings on legal change do not preclude that there have been other, equally significant, changes in the judicial interpretation of legal rules in Nigeria. But, based on our analysis of available litigation, the three main areas of change mentioned above appear most relevant to oil related cases.

<sup>104</sup> [1991] 9 NWLR.

<sup>105</sup> Per Karibi-Whyte, J.S.C. at page 180. Section 6(6)(b) of the 1979 Constitution stated: '*The judicial powers vested in accordance with the foregoing provisions of this section shall extend to all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person*'. Relying on this constitutional provision, Karibi-Whyte, J.S.C. stated: '*The Constitution has vested the Courts with the powers for the determination of any question as to the civil rights and obligations between government or authority and any person in Nigeria. See s.6(6)(b). Accordingly, where the determination of the civil rights and obligations of a person is in issue, any law which imposes conditions, is inconsistent with the free and unrestrained exercise of that right, is void to the extent of such inconsistency*.' Per Karibi-Whyte, J.S.C. at page 180. Based on this

*'Having held that in the institution of actions, the distinction between public and private nuisance in this country has been abolished by the Constitution 1979, the exercise of the right of action for nuisance is no longer based on or determined by the distinction'.<sup>106</sup>*

In other words, the Supreme Court found that the 1979 Constitution abolished the common law distinction between public and private nuisance as far as the right to institute actions in nuisance before Nigerian courts is concerned. Karibi-Whyte, J.S.C. explained the rationale behind the ruling in the following terms:

*I think the high constitutional policy involved in section 6(6)(b) [of the 1979 Constitution] is the removal of the obstacles erected by common law requirements against individuals bringing actions before the court against the government and its institutions, and the preconditions of the requirement of the consent of the Attorney-General. This becomes the more important when the provisions are procedural encrustments designed to protect peculiar social or political institutions.<sup>107</sup>*

This suggests that the Supreme Court considered a limitation of *locus standi* in public interest litigation as an impediment to justice. The significance of the Adediran case lies in the recognition that private persons no longer require the Attorney-General's consent to press public right's litigation. They can bring an action themselves as long as they show sufficient interest in the matter.

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contention, the Supreme Court regarded the restriction on the right of action in public nuisance as inconsistent with the 1979 Constitution and to that extent void.

<sup>106</sup> Per Karibi-Whyte, J.S.C. at page 182.

<sup>107</sup> Per Karibi-Whyte, J.S.C. at page 180.

The impact of the Adediran case on *locus standi* in Nigeria is as yet unclear. As Ogowewo (1995) has argued, the law relating to *locus standi* in Nigeria is still unsettled. According to Ogowewo (1995), '*the position now seems to be that the courts proceed on a case-by-case basis, intuitively deciding who should have standing*'. Courts continue to rely on the so-called '*civil rights*' test laid down in the controversial ruling in *Adesanya v. President of the Federal Republic of Nigeria*<sup>108</sup>. The civil rights test was defined by Bello, J.S.C. as follows: '*standing will only be accorded to a plaintiff who shows that his civil rights and obligations have been or are in danger of being violated or adversely affected by the act complained of*'.<sup>109</sup> The Supreme Court judges disagreed on the issue of *locus standi* which left the law relating to *locus standi* in Nigeria unsettled. While subsequent court cases have, to a large extent, followed the civil rights test, a broader interpretation of *locus standi* was, for instance, applied in a criminal case. In *Fawehinmi v. Akilu*<sup>110</sup>, the Supreme Court ruled that the Criminal Procedure Law of Lagos State gave every person a right to initiate private prosecution.<sup>111</sup>

In terms of oil related litigation, the new rule in the Adediran case could mean that private persons or organisations, e.g. environmental organisations, could sue oil

<sup>108</sup> [1981] 1 All N.L.R.

<sup>109</sup> Per Bello, J.S.C. at page 39.

<sup>110</sup> [1987] 4 NWLR.

<sup>111</sup> In that case, the court had to decide whether the applicant was entitled to apply for mandamus to compel private prosecution of certain persons. The Court of Appeal held that the applicant had no standing to sue as his legal rights had not been infringed. The Supreme Court set the rule of the Court of Appeal aside and held that the *locus standi* had been broadened since section 342 of the Criminal Procedure Law of Lagos State vests in every person a right to initiate a private prosecution. Nnamani, J.S.C. stated: '*It is my view that in these matters which are so interlined with the criminal law, our interpretation of Section 6(6)(b) of the Constitution must be approached with a true liberal spirit in the interest of the society at large. The Appellant has locus standi as any person to make the application he has brought to court, and if all other conditions are fulfilled, to initiate criminal proceedings*'. Per Nnamani, J.S.C. at page 855. The controversy on the issue of *locus standi* has continued. Ogowewo (1995) has argued that the ruling in *Fawehinmi v. Akilu* does not broaden the *locus standi*.

companies for damage from oil operations. Until now, only those directly affected by oil operations had a *locus standi*. The case *Douglas v. Shell*<sup>112</sup> could become a test case on the broadened interpretation of *locus standi* in oil related litigation. In that case, Oronto Douglas - an environmental rights activist - sued Shell, the NNPC, the Nigerian Liquefied Natural Gas (NLNG) project, Mobil and the Attorney-General for non-compliance with the Environmental Impact Assessment (EIA) Decree No.86 of 1992 (see section three of the thesis). The Douglas case was dismissed in the Federal High Court, which ruled that the plaintiff had no right to sue. Belgore, C.J. held that Douglas's claim was baseless and that '*the plaintiff shows no prima facie evidence that his right was affected nor any direct injury caused to him*'.<sup>113</sup> However, the court appeared to have failed to take into account all the facts related to the plaintiff's *locus standi*. The plaintiff's lawyers argued that Douglas had both a private interest in the suit as a native of a village affected by oil operations and a public interest as an environmentalist. In 1998, the case was still pending on appeal to the Court of Appeal. If the Douglas case or any subsequent oil related cases are able to successfully apply the broadened rules of *locus standi* to oil related litigation, this could open a floodgate for non-governmental organisations and other interested parties to sue oil companies in Nigeria. But the implementation of the rule laid down in the Adediran case may take some time to take effect since legal transformation is a slow process.

While the broadened rules of the public right to sue have so far failed to directly affect oil related litigation, there are indications that oil related litigation has undergone

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<sup>112</sup> Unreported Suit No. FHC/L/CS/573/96 in the Federal High Court, Lagos.

<sup>113</sup> Per Belgore, C.J. at page 2 of unreported judgment.



some transformation in terms of the private right to sue. Those affected by oil operations usually sue oil companies as a group rather than as individual plaintiffs. In the 1970s, it was not uncommon for a judge to dismiss a suit or to limit its scope because he found that the plaintiffs had not proven their authority to sue as a group. For instance, in *Chinda v. Shell-BP*<sup>114</sup>, the plaintiffs sued Shell-BP as representing the Rumuokani community in Rivers State for damage to houses and crops from gas flaring, and for general inconvenience and discomfort. Their claim was dismissed as the judge held that 'it is not proved that the six named plaintiffs sue as representatives of all the villagers'.<sup>115</sup> Since they had no authority to sue in a representative capacity, they were deemed to be suing only in respect of themselves individually.

More recently, however, cases in which oil companies have successfully been sued by plaintiffs representing a village community or a family as a whole have become more widespread.<sup>116</sup> In *Shell v. Tiebo VII*<sup>117</sup>, the plaintiffs sued Shell on behalf of the Peremabiri community for damage from an oil spill in 1987. The oil company lawyers pleaded misjoinder, among other legal defences. The court held that there was no misjoinder and awarded the plaintiffs 6 million Naira in compensation. This case exemplifies the broader interpretation of communally owned property by Nigerian courts. In order to illustrate this broader interpretation, it is illuminating to compare the Tiebo

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<sup>114</sup> (1974) 2 R.S.L.R.

<sup>115</sup> Per Holden, C.J. at page 4.

<sup>116</sup> Several recent high-profile cases by communities against oil companies from the 1990s can be cited: *Geosource v. Biragbara* [1997] 5 NWLR, *Shell v. Tiebo VII* [1996] 4 NWLR, *Shell v. Farah* [1995] 3 NWLR. In all of these cases, plaintiffs sued an oil company in representative capacity, not as individuals.

<sup>117</sup> [1996] 4 NWLR.



case with the cases of *Chinda v. Shell-BP*<sup>118</sup> and *Mon v. Shell-BP*<sup>119</sup>. In the Chinda case, the court pronounced that the plaintiffs suing in representative capacity could not receive compensation for damage to trees. Said the trial judge: '*each separate tree owner has a separate personal claim for damage to his or her trees*'.<sup>120</sup> In the Tiebo case, the plaintiffs were awarded compensation for damage to raffia palms. In the Mon case, the judge indicated that a community could not sue jointly in respect of damage to communal fishponds. In the Tiebo case, the plaintiffs were awarded compensation for damage to communal fish ponds.

While the facts in the above cases are different, the Tiebo case illustrates that Nigerian courts have interpreted the right to compensation for damage to communally owned property in broader terms. This does not imply that the private standing to sue has been broadened *per se*. It is yet too early to say whether there has been a general shift in judicial attitudes towards claims instituted in representative capacity. But a broader interpretation of communal claims is likely to frustrate the oil companies' legal defence based on misjoinder of parties and causes of action. By implication, communal claims of village communities are more likely to succeed. This in turn is likely to ease the access to courts for communities. In other words, the changing interpretation of *locus standi* appears to allow a greater number of individuals to sue oil companies.

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<sup>118</sup> (1974) 2 R.S.L.R.

<sup>119</sup> (1970-1972) 1 R.S.L.R.

<sup>120</sup> Per Holden, C.J. at page 3.

## 6.11. Evidence Rules

In respect of the rules on expert evidence in oil related cases, there are also indications of legal changes which may have benefited village communities. In *Elf v. Sillo*<sup>121</sup>, in which the Sillo family sued Elf for damage arising from oil operations, the Supreme Court partially relaxed the rules on expert evidence. The court pronounced a new interpretation of the standard of proof for damage where the evidence in support is unchallenged. Said Onu, J.S.C.:

*The standard of proof required in establishing the amount of damages in a case such as the one in hand, namely a case where the evidence in support is unchallenged, the law is that the burden assumed by the plaintiff/respondents hereis, is discharge upon a minimum of proof.*<sup>122</sup>

The application of this minimal standard of proof is limited to cases in which evidence is not challenged by the opposing litigant. This rule, nonetheless, presents a marked contrast with the previous insistence of the Supreme Court on a high standard of proof and expert evidence in oil related litigation.<sup>123</sup>

In addition to its ruling on the minimal standard of proof, the Supreme Court in the Sillo Case held that a court would be correct in preferring the credible evidence of a non-expert witness on an issue to the evidence of an expert on the same issue where the former is an independent witness whilst the latter prepared his evidence specifically for

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<sup>121</sup> [1994] 6 NWLR.

<sup>122</sup> Per Onu, J.S.C. at pages 279-280.

<sup>123</sup> See, in particular, judgments of the Supreme Court in *Seismograph Service v. Onokpasa* (1972) All N.L.R., *Seismograph Service v. Akporuovo* (1974) All N.L.R. and *Seismograph Service v. Ogbeni* (1976) 4 S.C.

the case on hand on the direction of the party calling him. In the particular case, Adio, J.S.C. said:

*The P.W.3 [third plaintiff's witness] made an inspection of the area on the direction of the Hon. Attorney-General of the state at a time when the possibility of the matter being settled amicably out of court was being explored while the D.W.1 [first defendant's witness] prepared his own report specifically for this case on the basis of the direction of the appellant [Elf] to the firm of the witness. The learned trial Judge felt, rightly, that the P.W.3 was an independent witness and his report [more] acceptable than the report prepared, specifically for use in this case, at the instance of the appellant. In preferring the evidence of the P.W.3 to the evidence of the D.W.1, the learned trial Judge had regard, rightly in my view, to other evidence before the court.*<sup>124</sup>

This attitude of the court departs from the earlier insistence of the Supreme Court and the Court of Appeal on the use of specially skilled experts in providing evidence. In *Seismograph Service v. Onokpasa*<sup>125</sup>, the Supreme Court declared:

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<sup>124</sup> Per Adio, J.S.C. at page 272.

<sup>125</sup> (1972) All N.L.R.

*If the learned trial judge had applied the correct test [of the relevance of the witness's opinion as that of an expert] he would have come to the conclusion that the only expert opinions before him were those of the defendant's experts, and so unless for good reasons otherwise should have accepted them.*<sup>126</sup>

In other words, the Supreme Court held that the evidence of an expert is absolutely necessary. In another important precedent *Seismograph Service v. Ogbeni*<sup>127</sup>, the Supreme Court reinforced the opinion that expert evidence is necessary to connect the damage with oil operations. A Supreme Court judge commented on the court ruling of the lower court: '*Surprisingly, the learned trial judge, while accepting that the evidence of an expert was necessary to establish that the damage to the house was traceable to seismic operations, held that it was not absolutely necessary*'.<sup>128</sup> In contrast to the above two cases, the significance of the case *Elf v. Sillo*<sup>129</sup> lies in its departure from the notion that an expert opinion is absolutely necessary to establish evidence in court, if only in relation to 'independent' non-expert evidence.

The application of the new interpretation of the rules of evidence laid down in the Sillo case has not been uniform as yet. Although a new precedent was set, the judiciary has resisted change to some extent, often preferring to rely on older judgments.<sup>130</sup> Today there is some evidence that the rules on evidence have been relaxed in oil related

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<sup>126</sup> Per Sowemimo, J.S.C. at page 357.

<sup>127</sup> (1976) 4 S.C.

<sup>128</sup> Per Obaseki, J.S.C. at page 171.

<sup>129</sup> [1994] 6 NWLR.

<sup>130</sup> See, for instance, *Ogiale v. Shell* [1997] 1 NWLR, in which the court relied on the evidence rules in *Seismograph Service v. Onokpasa* (1972) All N.L.R. and *Seismograph Service v. Ogbeni* (1976) 4 S.C.

litigation. In *Shell v. Isaiah*<sup>131</sup>, the Court of Appeal relied on the minimal standard of proof established in the Sillo case, although the court judgment also cited the cases *Seismograph Service v. Onokpasa*<sup>132</sup> and *Seismograph Service v. Ogbeni*<sup>133</sup>. In that case, the more relaxed rules of evidence assisted the plaintiffs in winning a compensation award for damage from an oil spill. In general, it is still too early to say how the courts have altered their attitude towards the rules of evidence. But the existence of a new trend towards relaxed rules of evidence in oil related litigation cannot be denied.

## 6.12. Quantum of Compensation Awards

The changing judicial attitudes towards *locus standi* and evidence rules in Nigeria have the potential of significantly affecting the outcome in oil related cases. But the most significant precedent in oil related litigation was created in 1994 in relation to the quantum of compensation awards with the case *Shell v. Farah*<sup>134</sup>. In that case, several families sued Shell for compensation for a well blow-out in 1970. The court established that Shell's evidence was not reliable and the plaintiffs were awarded 4,621,307 Naira in compensation. Dissatisfied with the judgment, Shell appealed against the decision. The Court of Appeal confirmed the award.

The Farah case is an important judicial precedent regarding the quantum of compensation for damage. In order to understand the impact of the Farah case, it is necessary to understand the principles of compensation payments before 1994. In order

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<sup>131</sup> [1997] 6 NWLR.

<sup>132</sup> (1972) All N.L.R.

<sup>133</sup> (1976) 4 S.C.

<sup>134</sup> [1995] 3 NWLR.

to illustrate the different approaches taken by courts to compensation in the 1990s, it is illuminating to compare the 1975 case *Umudje v. Shell-BP*<sup>135</sup> mentioned earlier with the Farah case.

In the Umudje case, the plaintiffs demanded a sum of 100,000 Naira for the destruction of their ponds and lakes as a result of oil spills and the construction of a road. The lower court awarded 14,400 Naira for the damage to 300 ponds, lakes and the land. Dissatisfied with the judgment, Shell-BP appealed against the decision. The Supreme Court confirmed the judgment but lowered the compensation payment from 14,400 Naira to 12,000 Naira for the damage to the ponds. The court found that there was no credible evidence for the damage to the lakes and the land.

On the surface, the basic principle of compensation in the Umudje case was identical to the Farah case. In the Umudje case, the judge said: '*The primary theoretical notion is to place the plaintiff in a good a position [sic], so far as money can do it, as if the matter complained of had not occurred*'.<sup>136</sup> In the Farah case, the principle of compensation was defined by the judge as to '*restore the person suffering the damnum [damage] as far as money can do that to the position he was [sic] before the damnum or would have been but for the damnum*'.<sup>137</sup> What distinguishes the Farah case from the Umudje case is the interpretation of the above principle by the court. In the Umudje case, this basic principle was interpreted very narrowly. Said the judge: '*We concede that a claim which asks for „a fair and reasonable compensation” ...is most inappropriate in*

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<sup>135</sup> (1975) 9-11 S.C.

<sup>136</sup> Per Idigbe, J.S.C. at page 162.

<sup>137</sup> Per Edozie, J.C.A. at page 192. Lawyers call the principle '*restitutio in integrum*'. See Percy (1983, 251-252 and 588).

*an action for damages in tort*'.<sup>138</sup> In the Farah case, the judge accepted that the plaintiffs were entitled to '*fair and adequate compensation*', as stipulated by the Petroleum Act. Onalaja, J.C.A. defined and broadened the basis of adequate compensation as '*market value of property when taken. It may include interest and may include the cost or value of the property in the owner for the purposes for which he designed it*'.<sup>139</sup> In other words, compensation must also be paid for the subsequent consequential and prospective future losses, not merely for the destroyed property. In addition, the court ruled that compensation should also be paid for the suffering of individuals as a result of the damage to land. The judge cited a textbook on damages as follows:

*Beyond physical damage to the land, however, a nuisance may cause annoyance, inconvenience, discomfort, or even illness to the plaintiff occupier. Recovery in respect of these principally non-pecuniary losses is allowable and may be regarded as part of the normal measure of damages.*<sup>140</sup>

The above pronouncements in the Farah case changed the basis of the award of compensation payments to those adversely affected by oil operations. In the Umudje case, the social effect of oil operations was not even considered, while the Supreme Court set aside the lower court's award of 800 Naira for '*injurious affection*' of the plaintiffs' farm land and 1,600 Naira for the damage to the plaintiffs' lakes. The plaintiffs merely received a single lump sum payment for the destruction of ponds. In contrast, in

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<sup>138</sup> Per Idigbe, J.S.C. at page 162.

<sup>139</sup> Per Onalaja, J.C.A. at page 199.

<sup>140</sup> Per Edozie, J.C.A. at page 194.



the Farah case, the plaintiffs were awarded compensation under multiple heads as follows: 2,371,307 Naira for the loss of income, 250,000 Naira for the '*social effect/general inconvenience*' and 2,000,000 Naira for the rehabilitation of the land. Before the Farah case arose, Shell had previously paid compensation to the community for the crops damaged as a result of oil operations. But the court found that the victims should also have been compensated for the loss of income. In the course of the two decades after the accident, the victims could not use the land for farming. On that basis, they were awarded 2,371,307 Naira for the loss of income for the period of 19 years. Since Shell failed to rehabilitate the land in that time, the community was also awarded 2,000,000 for rehabilitation of the land.

The compensation award in the Farah case is a marked departure from earlier court judgments in a number of respects. In earlier cases, oil companies often relied on federal legislation to limit the amount of compensation payments. On the question of the quantum of compensation, in *Odim v. Shell-BP*<sup>141</sup>, the judge ruled that the Constitution of 1963 and the Public Lands Acquisition Act '*are there to guide us on this point*'.<sup>142</sup> In contrast, in *Shell v. Farah*<sup>143</sup>, the judge refused to accept the Public Lands Acquisition Act as the basis for the quantum of compensation. The oil company lawyer relied on federal legislation by referring to the Public Lands Acquisition (Miscellaneous Provisions) Act No.33 1976. The 1976 Act fixed the sum of 1,250 Naira per hectare as the maximum compensation for outright acquisition of arable land. If applied to 7 hectares, the plaintiffs

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<sup>141</sup> (1974) 2 R.S.L.R.

<sup>142</sup> Per Wai-Ogosu J. in *Odim v. Shell-BP* (1974) 2 R.S.L.R. 93 at 109.

<sup>143</sup> [1995] 3 NWLR.

in the Farah case would only receive 8,750 Naira (US\$ 397 at 1994 exchange rate). Since the amount was rather insignificant, an application of the provisions of the Public Lands Acquisition Act in the Farah case would have favoured the interests of the oil industry. By relying on federal legislation and official compensation rates, Shell would not have to pay for loss of income and some other types of losses. The value of official rates also decreased over time because of currency depreciation and inflation. For instance, the maximum compensation rate of 1,250 Naira per hectare was worth US\$ 1994 when the Act was promulgated in 1976 but declined to 56.83 US\$ when the Farah case was decided in 1994. The consumer prices in Nigeria rose by over 1,100% between 1976 and 1994.<sup>144</sup> Because of inflation, it made sense for oil companies to delay compensation payments and to rely on official rates. In contrast to some earlier court judgments, in the Farah case, the court objected to the use of official compensation rates and to the application of legislation in determining the compensation sum. Said Edozie, J.C.A.:

*Where a tortuous act is committed, the injured party is entitled to damages in accordance with the measure of damages applicable to his injury. The measure of damages for injury affecting land bears no relevance to the amount of compensation for outright acquisition of the land under the Public Lands Acquisition Act.*<sup>145</sup>

The new principles of compensation payments established in the Farah case worked against a number of the previous legal strategies employed by oil companies to avoid substantial compensation payments to village communities. A common strategy

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<sup>144</sup> Based on the IMF figures for Nigerian consumer prices, see IMF Financial Statistics Yearbook 1995.

<sup>145</sup> Per Edozie, J.C.A. at page 195.

was to pay paltry sums for the destruction of crops in order to avoid other forms of compensation. In *Nvogoro v. Shell-BP*<sup>146</sup> mentioned earlier, the oil company paid a small sum of money to the plaintiff's illiterate brother, who thumb-printed a receipt for the money. Shell-BP used the receipt in court, saying that any compensation due had been paid, and the plaintiff lost the case on those grounds. In the Farah case, Shell also tried to use the same strategy by arguing that the plaintiffs had already been paid compensation for damage to crops as a result of the well blow-out. The company argued that the plaintiffs should not receive more money as further compensation. The company lawyer argued that it was wrong for the court not to have held that Shell paid compensation for all the losses arising from the blow-out. As evidence of its payments, Shell tendered a receipt with the thumb prints of 84 illiterate villagers. The trial judge dismissed the company's evidence because the receipt did not include the names of the plaintiffs and referred to a different piece of land. He also pointed out that the plaintiffs claimed compensation for damage to land, not crops. In other words, in contrast to the *Nvogoro* case, the judge held that compensation for damage could be paid more than once in respect of the same cause of damage, if the claim was made in respect of different items of assessment.

The court further averred that a mere payment of compensation by an oil company in respect of a specific item did not necessarily discharge the company's obligation to make a fair and adequate payment to those affected by oil operations. Shell claimed that it had paid 2,000 Naira compensation for the damage to the land, but the

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<sup>146</sup> 2 R.S.L.R. (1973).

trial judge rejected this objection by arguing: '*Even if the sum of N2,000 was paid to the plaintiffs, it cannot be a fair and adequate compensation for the damage to the land*'.<sup>147</sup>

In other words, the court found that the mere fact of paying compensation is not an excuse, the payment must also be fair and adequate. This decision clearly frustrated previous oil company strategies, which relied on receipts signed or thumb printed by local people in respect of token compensation payments. It was a departure from previous court judgments in the sense that the court compelled an oil company to pay compensation more than once in respect of the same injury.

On the whole, the significance of the Farah case as a landmark ruling in terms of compensation payments lies in the court's departure from the previous narrow understanding of the basis of compensation awards. The precedent in the Farah case broadened this understanding to include items such as e.g. non-pecuniary losses. As a result of these innovations in the assessment of compensation, the understanding of what constitutes '*fair and adequate*' compensation was broadened. If the precedent in the Farah case is followed in future case judgments, an oil company will no longer be able to discharge its legal obligation to pay '*fair and adequate*' compensation for damage from oil operations by paying a paltry sum to those affected.

In the wake of the Farah case, substantial compensation payments were awarded in a number of court cases between village communities and oil companies. A comparison of compensation awards before and after the Farah case illustrates the changes. In *Mon v. Shell-BP*<sup>148</sup>, the plaintiffs did not prepare a valuation of their claims, so the judge

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<sup>147</sup> Per Edozie, J.C.A. at page 175.

<sup>148</sup> (1970-1972) I R.S.L.R.

assessed the compensation figure himself at 200 Naira (US\$ 304 at the official exchange rate). The compensation payment was only 0.1% of the plaintiffs' original demand. One of the notable exceptions was *Fufeyin v. Shell-BP*<sup>149</sup> in 1978, in which the plaintiffs were awarded as much as 55,691 Naira (approx. US\$ 88,189) for the destruction of houses, crops, fishing creeks, canals, fish ponds, traps and other property. The reason for this substantial payment was that Shell-BP had earlier agreed to the amount of compensation anyway. It is difficult to compare different court cases because the facts in each case are unique and they involve different types of damage. But there is evidence that, in the wake of the ruling in the Farah case, higher compensation payments were paid to those adversely affected by oil operations. In *Shell v. Tiebo VII*<sup>150</sup>, 6,000,000 Naira (US\$ 274,173) was awarded, while in *Shell v. Isaiah*<sup>151</sup>, 22,000,000 Naira (US\$ 1,005,208) was awarded (see Table 6.1.).

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<sup>149</sup> (1978) 2 ANSLR.

<sup>150</sup> [1996] 4 NWLR.

<sup>151</sup> [1997] 6 NWLR.

**Table 6.1. Compensation Awards in Selected Oil Related Cases**

Year of Judgment	Court Case	Plaintiff's Claim (000s Naira)	Defendant's Offer (000s Naira)	Compensation Award (000s Naira)	Compensation Award (US\$)	Compensation Award as Share of Claim
1972	Mon v. Shell-BP	200	0	0.2	304	0.1%
1975	Umudje v. Shell-BP	50	0	12	19,481	24%
1978	Fufeyin v. Shell-BP	56	56	56	88,189	100%
1978	Shell-BP v. Cole	n.a.	0	35	55,118	n.a.
1994	Shell v. Farah	26,490	0	4,621	210,084	17%
1996	Shell v. Tiebo VII	64,146	50	6,000	274,173	9%
1996	Shell v. Udi	50	0	39	1,782	78%
1997	Geosource v. Biragbara	2,000	0	197	9,001	10%
1997	Shell v. Isaiah	22,000	0	22,000	1,005,208	100%

Source: official currency exchange rates were derived from *IMF International Financial Statistics* (various years).

In *Shell v. Tiebo VII*<sup>152</sup>, two years after the judgment in the Farah case, the plaintiffs sued Shell on behalf of the Peremabiri community in the then Rivers State for damage from an oil spill in 1987. The oil spill, estimated at 600 barrels of crude oil, polluted the River Nun, which had previously been used as a source of fresh water and for fishing. Members of the community who drank the water after the spill suffered from water-borne diseases. In addition, the oil spill damaged swampland, streams, ponds and the community's juju shrines. Shell did not deny the oil spill, but claimed that it had only affected an area of 2.3 hectares of seasonal swamp and fish flats. It offered the community 5,500 Naira as '*fair and adequate compensation*'.<sup>153</sup> The lower court awarded 6,000,000 Naira to the plaintiffs and the Court of Appeal affirmed the judgment. The substantial compensation sum awarded in the Tiebo VII case exemplified the trend

<sup>152</sup> [1996] 4 NWLR.

<sup>153</sup> According to plaintiffs' witnesses, the sum was 50,000 Naira, not 5,500 Naira as Shell's witnesses maintained.

towards higher compensation awards in the 1990s in respect of damage from oil operations.<sup>154</sup>

As a whole, this sub-section indicated that there have been a number of legal transformations in relation to *locus standi*, evidence rules and quantum of compensation. These transformations appear to have largely benefited village communities in oil related litigation.

## Understanding Legal Transformation

### 6.13. Changing Approach to Law

The previous sub-section has highlighted a number of changes which occurred within Nigerian judicial decision making. It is less clear why legal change has occurred. In this sub-section, we propose a framework for explaining this legal transformation.

Obviously, any analysis of the causes of legal change must remain speculative. Amongst the most likely explanations are, first, a different approach to law by judicial officers, second, the increased professional ability of legal counsel working for village communities, and third, the impact of changing social attitudes on judges. We have attempted to investigate these explanations in the context of an interview with a senior Nigerian judge M.B. Belgore, Chief Justice of the Federal High Court.<sup>155</sup>

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<sup>154</sup> Interestingly, the Tiebo VII case did not cite the Farah case as a legal precedent. But Onalaja, J.C.A. who delivered the judgment, was one of the Court of Appeal judges in the Farah case. This would suggest that the Farah case, while important as a legal precedent, is in itself a reflection of a broader shift in judicial attitudes towards higher compensation payments.

<sup>155</sup> Personal interview with M.B. Belgore, Chief Justice of the Federal High Court (Lagos, March 1998). Belgore largely confirmed our speculations that legal change was affected by the three factors: different approach to law by judicial officers, the increased professional ability of legal counsel working for village communities, and the influence of changing social attitudes on judges. He also maintained that legal change could also be attributed to the increased frequency of accidents in the oil industry and the resulting legal disputes. It is possible that the



First, contemporary Nigerian judges appear to approach law in a different manner from their predecessors. Said Belgore, C.J.: '*One possible explanation [for legal change] is that judges everywhere today are moving away from Common Law of the 17th and 18th centuries. We approach the 21st century. We are moving towards a new modern law tradition*'.<sup>156</sup> According to Belgore, one of the differences in the judges' approach is the greater importance attached to substantive rules as opposed to procedural ones.<sup>157</sup> One of the indicators of these changing attitudes is that judges have increasingly cited court precedents, particularly Nigerian ones, rather than legislation. For instance, in *Seismograph Service v. Akporuovo*<sup>158</sup>, only one Nigerian court case was referred to in the judgment. In the more recent case *Shell v. Farah*<sup>159</sup>, 36 Nigerian and 12 foreign court cases were cited (see Table 6.2.). Evidence from court cases indicates that there is a dual development. Nigerian courts appear to move away from statute law towards a greater application of judicial precedents. Moreover, courts move towards a Nigerian case law.

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increased frequency of litigation has accelerated the process of social learning among judges. But the quantity of litigation cannot explain *per se* why courts have changed their interpretation of legal rules.

<sup>156</sup> Personal interview with M.B. Belgore, Chief Justice of the Federal High Court (Lagos, March 1998). On the shifting attitudes of Nigerian judges in general, see e.g. Nweze (1996).

<sup>157</sup> The case *Fawehinmi v. Aminu*<sup>157</sup>, which was adjudicated by Belgore, illustrates that courts have come to interpret legal statutes and legal rules in a less narrow fashion. In that case, a Nigerian legal practitioner sued the Minister of Petroleum Resources Jubril Aminu and other defendants, including the NNPC, over the use of Nigeria's oil revenues in 1990. The NNPC requested the court to discharge them on the grounds that the plaintiff did not give them 30 days statutory notice as required by section 12(2) of the NNPC Act 1977. The judge concluded:

*The right to access to Court should not be impeded by a process giving special advantage to the defendant for no other reason than that it is an organ or semi-organ of the Government. Any law putting it in such a position is certainly against the Constitution, void and invalid.*

Belgore, therefore, dismissed the NNPC's application and declared the aforementioned section of the NNPC Act 1977 as unconstitutional.

<sup>158</sup> (1974) All N.L.R.

<sup>159</sup> [1995] 3 NWLR.

**Table 6.2. Number of Nigerian and Foreign Cases Cited in Selected Oil Related Cases**

Year of Judgment	Court Case	Court	Number of Foreign Cases	Number of Nigerian Cases
1972	Seismograph Service v. Onokpasa	Supreme Court	3	0
1974	Seismograph Service v. Akporuovo	Supreme Court	0	1
1975	Umudje v. Shell-BP	Supreme Court	8	0
1976	Seismograph Service v. Ogbeni	Supreme Court	0	2
1978	Shell-BP v. Cole	Supreme Court	1	6
1994	Shell v. Farah	Court of Appeal	12	36
1994	Eboigbe v. NNPC	Supreme Court	3	11
1994	Elf v. Sillo	Supreme Court	0	32
1996	Shell v. Tiebo VII	Court of Appeal	9	46
1996	Shell v. Udi	Court of Appeal	0	11
1996	Ogiale v. Shell	Court of Appeal	9	20
1997	NNPC v. Elumah	Court of Appeal	0	4
1997	Shell v. Isaiah	Court of Appeal	1	12

An analysis of Nigerian court cases provides examples of a changing approach to law. In the past, courts have seemed reluctant to adjudicate matters related to legislation and government affairs. In oil related litigation, this could amount to the courts' reluctance to prosecute oil companies or to raise petroleum matters. In *Amos v. Shell-BP*<sup>160</sup>, the trial judge commented:

<sup>160</sup> 4 E.C.S.L.R.

*I do not think the courts have any jurisdiction to hear any claims for compensation under the Minerals Law. Section 78 lays down clearly the method of assessment, which in the absence of agreement is purely administrative, first through the divisional or district officer with an appeal to the Governor, who may order arbitration. Such an order would in my view be the only way in which the courts could acquire jurisdiction.*<sup>161</sup>

According to the above logic, courts could only decide matters related to compensation, if a specific piece of petroleum legislation mentioned the word 'court'. This narrow interpretation would imply that the government could dictate whether the courts could decide a particular type of lawsuit or not. In this context, the judge somewhat misinterpreted the role of courts under English Common Law.<sup>162</sup> In general, the Amos case exemplified the courts' unwillingness to interfere with legislation and government affairs.

In more recent cases, the courts were more willing to interfere with legislation and government affairs. In *Shell v. Isaiah*<sup>163</sup>, the court ruled on the meaning of the Constitution (Suspension and Modification) Decree No.107 of 1993, which extended the original jurisdiction of the Federal High Court to oil related matters (see section three of the thesis). The Court of Appeal pronounced that the 1993 Decree does not affect oil

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<sup>161</sup> Per Holden, C.J. at page 490.

<sup>162</sup> Under Common Law, statutes of limitation can limit the period of limitation, within which a lawsuit can be brought to court. But legislation cannot limit the jurisdiction of courts to hear a tort case. Under some circumstances, courts may also override statutory limitations. On limitation of action, see Percy (1983, 199-230).

<sup>163</sup> [1997] 6 NWLR.

spillage matters. Notwithstanding the impact of the Isaiah case on legislation, the court judgment illustrates that contemporary courts are more willing to re-interpret statute law.

A greater willingness to re-interpret statutes was accompanied by the courts' greater reluctance to apply procedural or substantive rules which impede or delay justice to the plaintiffs. In *Nwadiaro v. Shell*<sup>164</sup>, the oil company claimed that the compensation claim was statute barred according to the English Statute of Limitation 1623. The statute prescribes that a plaintiff must begin a lawsuit within six years of the cause of grievance. In the present case, the community started the lawsuit in 1985, nineteen years after Shell constructed a road which resulted in damage to communal ponds. The Court of Appeal found that the statute of limitation was not applicable because the oil company had admitted liability for damage during negotiations in 1985. Said the judge: *'If there has been admission of liability during negotiation and all that remains is fulfilment of the agreement it cannot be just and equitable that the action would be barred after the statutory period of limitation'*.<sup>165</sup> The judge dismissed, what he considered, a too narrow interpretation of the statute.

In *Shell v. Udi*<sup>166</sup>, the Court of Appeal indicated that it was not prepared to tolerate undue delays to justice brought about by oil company lawyers. In that case, the plaintiff claimed compensation for the destruction of fish ponds and trees during oil operations. On the date of the hearing in the Ughelli High Court, neither a company representative or a lawyer were in court. J.E. Shakarho, company lawyer, merely sent a

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<sup>164</sup> [1990] 5 NWLR.

<sup>165</sup> Per Kolawole, J.C.A. at page 339.

<sup>166</sup> [1996] 6 NWLR.

letter requesting an adjournment since he had to travel to a law conference. The two other lawyers working with Shakarho did not appear in court either and failed to give a reason for their absence. The lawyers also failed to file a statement of defence, even though the company had over four months to prepare it. The judge felt that the lawyers and company representatives did not take the case seriously. In his words, the behaviour of company lawyers was an *'example of wilful refusal or neglect to comply with Rules of Court'*.<sup>167</sup> The judge hence refused to grant adjournment of the case and the plaintiffs were awarded compensation. The oil company lawyers appealed against the judgment to the Court of Appeal. The court dismissed the appeal and confirmed the judgment of the lower court. On the issue of adjournment, the judge ruled that *'the grant of an adjournment in a case is a matter entirely within the discretionary jurisdiction of the court which the court should exercise in accordance with the particular facts and circumstances of the case'*.<sup>168</sup> The judge's uncompromising attitude towards the oil company was reflected in the following statement:

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<sup>167</sup> Per Akintan, J.C.A. at page 495.

<sup>168</sup> Per Akintan, J.C.A. at page 496.

*The request for an adjournment was merely to further delay the court giving judgment in favour of the respondent since there was nothing done by the appellant [Shell] to show that it was going to oppose the application made to the court by the respondent. Similarly, no explanation was given for the absence of the representative of the appellant. This also could only be interpreted as showing lack of interest in the matter by the appellant.*<sup>169</sup>

The above two cases suggest that Nigerian judges are no longer prepared to tolerate legal technicalities and delay tactics by legal practitioners as a reason for preventing plaintiffs from instituting claims. This appears to support the earlier speculation that there has been a change in the judges' approach to law in the sense that they have come to attach greater importance to the substance of law.

#### **6.14. Increased Professional Ability of Legal Counsel**

As another explanation for legal change, we suggest that increased professional ability of legal counsel working for village communities has influenced the outcome of oil related court judgments. One of the indicators of this increased professional ability is the sophisticated use of evidence by plaintiffs. Again Belgore, C.J. confirmed: *The damage is assessed more than before. Plaintiffs increasingly bring scientific evidence of the effects of oil on the soil.*<sup>170</sup>

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<sup>169</sup> Per Akintan, J.C.A. at page 497.

<sup>170</sup> Personal interview with M.B. Belgore, Chief Justice of the Federal High Court (Lagos, March 1998).

A number of Nigerian court cases provide examples of a more sophisticated use of evidence by legal counsel for village communities. In the past, the quality of witness evidence was frequently of an inadequate standard. In *Odim v. Shell-BP*<sup>171</sup>, there was only one witness for the plaintiff - the second plaintiff and two witnesses for the defendant, two Shell-BP employees, but there were no expert witnesses. In contrast, in more recent cases, legal counsel for village communities has often used sophisticated expert evidence. In *Shell v. Tiebo VII*<sup>172</sup>, nine witnesses testified for the plaintiffs. They included a licensed surveyor. The plaintiffs' success in *Shell v. Farah*<sup>173</sup> was to a large extent possible because the community provided credible and sophisticated evidence of damage. The plaintiffs were assisted by a joint team of scientists from the University of Port Harcourt. When the lower court was faced with conflicting evidence from the plaintiffs and the defendant, the plaintiffs' lawyer moved the court to appoint two referees to investigate the disputed facts. The lawyer's pro-active stance was rewarded as the referees' subsequent report largely supported the plaintiffs' evidence.

It is not entirely clear to what extent the legal innovations in the 1990s have been induced or aided by the sophisticated and innovative use of legal rules by legal counsel. But there are examples which indicate that the judge's views on the legal issues involved in a case and expressed in a court judgment reflect arguments in the lawyer's brief. In *Shell v. Farah*<sup>174</sup>, the court judgment reflected the legal reasoning of the legal counsel for the plaintiffs, L.E. Nwosu, on a number of points. For instance, the court accepted

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<sup>171</sup> (1974) 2 R.S.L.R..

<sup>172</sup> [1996] 4 NWLR.

<sup>173</sup> [1995] 3 NWLR.

<sup>174</sup> [1995] 3 NWLR.



Nwosu's reasoning that the Public Lands Acquisition (Miscellaneous Provisions) Act was irrelevant in the assessment of compensation in the Farah case.

Court judgments cannot fully reveal the extent to which courts follow arguments presented by legal counsel. But the increased professional ability of legal counsel may reflect a process of social learning among village communities and their legal counsel. This process could be partly explained by the increased reliance of village community lawyers on contingency fees (see section four of the thesis). A lawyer hired on a contingency fee does not receive any payment if he or she loses a case. It could be thus argued that contingency fees provide an economic incentive for a lawyer to be more innovative and pro-active in court proceedings in order to increase the chances of success in a case.

### **6.15. Impact of Changing Social Attitudes on Judges**

While legal change has been affected by the attitudes of judges and the ability of legal counsel, it may also have been influenced by changing social attitudes. Said Belgore, C.J.:

*Judges of today have seen a lot more development than twenty years ago. They are more aware now of oil industry problems than thirty years ago... As one American jurist said, the current affair doesn't pass by the judges. The judge cannot be isolated from what is currently going on in society in line with a particular subject.*<sup>175</sup>

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<sup>175</sup> Personal interview with M.B. Belgore, Chief Justice of the Federal High Court (Lagos, March 1998).

Court judgments cannot portray the mode by which changing social attitudes have influenced the judges. But evidence from court cases indicates that judges have become more critical of the behaviour of oil companies and their legal counsel which may reflect the increasingly critical attitudes towards oil operations in Nigeria in recent years.

In *Shell v. Uzoaru*<sup>176</sup>, oil company lawyers argued that the plaintiffs' claim was statute barred. Relying on the previous precedent in *Nwadiaro v. Shell*<sup>177</sup> mentioned earlier, the Court of Appeal found that the statute of limitation was not applicable because the oil company had previously admitted liability. The judges hence considered Shell's claim unwarranted and criticised the behaviour of Shell's legal counsel. Said Onalaja, J.C.A.:

*I put it succinctly, that abuse of judicial process is misuse of judicial procedure intentionally to feather one's interest to the detriment of one's adversary, no court shall support or permit the abuse of its process. With the decision in Nwadiaro v. Shell the further pursuit of this appeal is vexatious knowing fully well following the rule of judicial precedent that the Court of Appeal is bound by its previous decision as the issues decided therein are the same, the present appellant is estopped by record from pursuing this appeal which is frivolous and [sic] abuse of process of this court.*<sup>178</sup>

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<sup>176</sup> [1994] 9 NWLR.

<sup>177</sup> [1990] 5 NWLR.

<sup>178</sup> Per Onalaja, J.C.A. at page 73.

In other words, the judge suggested that the oil company used a standard legal strategy to '*intentionally feather*' its interest to the detriment of those affected by oil operations. Onalaja's statement may reflect the increasingly more critical attitudes of the judiciary towards the oil industry.

One of the indicators of the judges' changing attitude towards the oil companies and village communities is the amount of compensation awarded to those affected by oil operations. Said Belgore, C.J.:

*While the law is there, the human element counts in the judge's discretion. If there is compensation and maybe the plaintiffs claim 5 million Naira, you cannot award 5 million but, at the same time, you cannot award 500 Naira. You go in-between and that's where the discretion and the sympathy of the judge comes in.*<sup>179</sup>

As previously shown, courts have recently come to award higher compensation payments to village communities. By implication, the increased compensation awards are likely to reflect the increased use of discretion by Nigerian courts to the benefit of village communities.

In conclusion, there appear to be multiple reasons why legal change has occurred. We have identified three parallel developments, which may explain more favourable judgments in favour of those affected by oil operations: a different approach to law by judicial officers, the increased professional ability of legal counsel working for village communities, and the influence of changing social attitudes on judges. Of these three

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<sup>179</sup> Personal interview with M.B. Belgore, Chief Justice of the Federal High Court (Lagos, March 1998).

developments, changing social attitudes is probably the key one. As Hall (1989, 245-246) has noted, the business of the courts mirrors the economic and social changes brought by economic development, while judges play a part in allocating the costs, risks and benefits of this development. Even if the judges' approach to law changes and the skill of legal counsel improves, a judge will not use his discretion in favour of one party unless he or she is convinced of the merits of a particular allocation. In that sense, legal change in oil related litigation has to be ultimately rooted in social attitudes towards the allocation of the benefits and externalities arising from oil operations in Nigerian society. No longer does the judiciary view itself as merely a part of the economic and political elite but it shows a greater concern with justice.<sup>180</sup> This concern could be attributed to a number of factors including public pressures and the existence of a new generation of judges.

## Conclusion

### 6.16. Conclusion

This section of the thesis has provided an in-depth analysis of the nature of the legal disputes between oil companies and village communities. To this end, we have utilised the evidence from a number of Nigerian court cases. We have focused on substantive rules applied in those disputes and on legal changes.

We set out by investigating why many disputes cannot be resolved through informal negotiations and mediation and may thus result in litigation and violence. This

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<sup>180</sup> In *Irou v. Shell-BP* Unreported Suit No. W/89/71, Warri HC mentioned earlier, the judge ruled that nothing should be done to disturb the operations of the oil industry which '*is the main source of this country's revenue*'. Such pronouncements in support of the oil industry cannot be found in more recent judgments.

discussion has served as a window to an understanding of non-legal forms of disputes which in turn can help to understand the dynamics underlying legal disputes.

We have employed a number of court cases to illustrate how the legal remedies of tort law have been used by village communities in their suits against oil companies. We have focused on three types of remedies from tort law: negligence, nuisance and strict liability. Evidence from litigation indicated that the success of claimants was often limited because oil companies were able to use a number of substantive and procedural rules as effective legal defences in oil related litigation. There were some indications that the principles of the Common Law worked in favour of oil companies.<sup>181</sup> For instance, in *Shell v. Enoch*<sup>182</sup> mentioned earlier, the plaintiffs had a valid legal claim to compensation for damage from oil operations but Shell's legal counsel was able to successfully invoke the defence of misjoinder of parties and causes of action. The Enoch case illustrated that legal defences provided by Common Law such as misjoinder of parties and causes of action may act to reduce the ability of Nigerian village communities to assert their legal rights in compensation claims arising from oil operations.

Our analysis was partly motivated by the perception of a paucity of studies on judicial law-making in Africa. This problem is particularly significant in the context of legal disputes between multinational companies and the local populace in developing countries. These disputes have increased in quantity over the past few decades, in part as a result of legal changes in favour of the local populace. Legal studies have too often

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<sup>181</sup> A number of general, theoretical problems involved in introducing European legal concepts to Africa have been discussed in Nunn (1995).

<sup>182</sup> [1992] 8 NWLR.

overlooked this dynamic process. In respect of oil related litigation in Nigeria, previous scholars who have discussed court cases have generally confined their analyses to a description of substantive law but have failed to discuss the dynamic aspects of litigation. For instance, Adewale (1987, 1989, 1995), who wrote a number of academic papers dealing with oil related cases in Nigeria, has failed to investigate legal change. This failure has led scholars to believe that the principles of tort law cannot offer a remedy to those affected by oil operations. As recently as 1997, Okonmah (1997) wrote in the *Journal of African Law* that 'victims of oil pollution... are left to the vagaries of the common law regime based largely on the torts of trespass to land, nuisance, negligence and the rule in *Rylands and Fletcher*'. Emphasising the problems of burden of proof with respect to causation, Okonmah (1997) concluded: 'Where he [a claimant] succeeds in discharging this burden, the amount of damages awarded by the courts is inadequate to assuage his losses'. This analysis failed to take any account of important court judgments such as *Shell v. Farah*<sup>183</sup> or *Elf v. Sillo*<sup>184</sup> which were published in the *Nigerian Weekly Law Report* several years before the publication of Okonmah's article. The studies by Adewale and Okonmah exemplify that the dynamic aspects of litigation have been ignored by Nigerian scholars which has left a gap in the literature on legal change in oil related litigation. We have attempted to fill this gap by examining 68 Nigerian court cases. In this context, we were able to show that legal change plays an important role in oil related litigation in Nigeria.

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<sup>183</sup> [1995] 3 NWLR.

<sup>184</sup> [1994] 6 NWLR.

The evidence presented in this section of the thesis suggested that there has been a trend towards the adoption of substantive and procedural rules which render it easier for village communities to successfully litigate against oil companies in Nigeria. The liberalisation of *locus standi* and evidence rules and a broader interpretation of the quantum of compensation have all helped village communities to win recent court cases against oil companies. Important precedents have been set in *Adediran v. Interland Transport*<sup>185</sup> and *Elf v. Sillo*<sup>186</sup>. Above all, the precedent in *Shell v. Farah*<sup>187</sup> has assisted with higher compensation awards for communities. It is perhaps too early to foresee the full impact of legal change on legal disputes between oil companies and village communities since legal transformation is a slow process. But legal change appears to have already resulted in tangible material benefits to community litigants. In a number of recent high profile cases, including *Shell v. Tiebo VII*<sup>188</sup> and *Shell v. Isaiah*<sup>189</sup>, village communities won substantial amounts of compensation for damage from oil operations. The increased possibility of higher compensation awards may partly account for the increased quantity of litigation against oil companies.

We speculated that legal change could be explained by three parallel developments: a different approach to law by judicial officers, the increased professional ability of legal counsel working for village communities, and the impact of changing social attitudes on judges. We suggested that the key factor in legal change in oil related

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<sup>185</sup> [1991] 9 NWLR.

<sup>186</sup> [1994] 6 NWLR.

<sup>187</sup> [1995] 3 NWLR.

<sup>188</sup> [1996] 4 NWLR

<sup>189</sup> [1997] 6 NWLR.



litigation was probably the changing social attitudes towards the allocation of the benefits and externalities arising from oil operations in Nigerian society.

While there are indications that legal change may have benefited village communities, it has to be remembered that most plaintiffs face significant barriers in accessing courts and that legal practitioners tend to regard courts as biased in favour of oil companies (see section four of the thesis) and that there are indications of a bias in Nigeria's statute law in favour of oil companies (see section three of the thesis). The scope for law-making by Nigerian judges is also limited because they have to apply English Common Law, which ties judicial decisions to the pattern of development in the British Commonwealth. By relying on foreign legal precedents, Nigerian courts may sometimes be prevented from fully addressing specific local issues. English legal traditions, including strict standards of scientific evidence or statutes of limitation, decrease the chances of success for potential litigants in oil related cases. Even if a plaintiff is able to win a lawsuit, litigation can only address the damage suffered by a specific individual, family or village community but not the impact of oil operations on the oil producing areas as a whole. Since courts are reluctant to make use of injunctions against oil companies, they are unlikely to be able to compel companies to reduce the externalities arising from oil operations.

These basic limitations could help to explain why legal change in favour of village communities has so far failed to reduce the quantity of violent forms of protest against oil companies. Indeed, the ambiguous nature and the uncertainty of legal outcomes could partly help to explain why a significant number of frustrated litigants and potential

litigants in oil related disputes may resort to violence. In that sense, legal change could be said to have not gone far enough to discourage extra legal forms of protest such as the kidnapping of oil company staff. In its modest way, our analysis has contributed to an understanding of one of the elements of disputes between oil companies and village communities in Nigeria.

## **Section 7: Conclusion**

### **7.1. Findings of the Thesis**

This thesis has analysed legal disputes between village communities and oil companies in Nigeria. This analysis has been guided by three principal aims. First, the thesis was an attempt to provide a detailed analysis of the nature of legal disputes between oil companies and village communities in Nigeria, particularly in the light of the rise in oil related litigation. Second, the study of litigation was meant to serve as a window to an understanding of social conflicts between village communities and oil companies. Third, the thesis was aimed at making a contribution to the research and the debate on the role of multinational companies in developing countries and on the day-to-day operations of African legal systems. Above all, we attempted to fill a gap in the academic writing on the Nigerian oil industry in terms of a socio-legal analysis of legal disputes between oil companies and village communities.

The framework of analysis was provided by the contemporary Nigerian legal system. An analysis of the available evidence, including exemplary cases from Nigerian courts and a survey of 154 Nigerian legal practitioners, has illustrated the conflicts between oil companies and communities and has elucidated the relevant issues. Using legal materials, the thesis portrayed the social and legal dynamic in relation to disputes arising from oil operations.

It is perhaps evident that an investigation of legal materials cannot address all correlates of legal disputes such as socio-economic and political factors including the

marginalisation of ethnic minorities in the oil producing areas. We have thus looked at the political and legal context of oil operations with the aim of providing the background for an analysis of legal disputes. This investigation has confirmed our initial expectation that an adequate investigation of legal conflicts cannot be undertaken without reference to the social context.

In the range of secondary material to which reference has been made in section two it has been instructive to trace the making of Nigeria's oil industry. A discussion of secondary sources was not exhaustive but selective. It suggested that the rise in social unrest and litigation may be partly attributed to the unequal allocation of benefits and externalities arising from oil operations within Nigerian society which cannot be derived from an analysis of court cases. This discussion has indicated that the relationship between oil companies and village communities is an unequal one, in which oil companies can muster greater political support and economic muscle. By implication, it could be expected that the Nigerian state would be reluctant to support litigation against foreign oil companies since litigation could disrupt the flow of oil rents to the government and private middlemen.

This speculative finding on the bias of the state in favour of oil companies found tentative support in the analysis of the formal legal system. Section three, which has discussed statute law and the structural character of the legal system, has provided a number of indications that the formal legal framework in Nigeria tends to be predisposed in favour of oil companies at the expense of village communities. The formal-institutional structure of the Nigerian legal system is well developed and sophisticated but oil related

statute law appeared to offer little protection for village communities in the oil producing areas. In this context, it could be argued that an alliance of the political elite and private interests in Nigeria obstructs the development of legal remedies for externalities arising from oil operations. The inadequate legislative provisions and lack of legal enforcement may thus lead to social unrest and litigation against the oil industry.

The analysis of the survey of legal practitioners in section four examined the constraints and opportunities that are faced by litigants in oil related cases. Our findings suggested that the Nigerian legal system as a whole, not merely statute law, government policy or superior resources of oil companies, favours the interests of oil companies. Being a developing country, Nigeria faces many inadequacies in the day-to-day operations of the legal system. But, in the views of legal practitioners, litigants who sue oil companies face greater constraints than other litigants. A significant part of the data indicated that the problems of access to courts are greater in oil related litigation. In this context, the lack of funds and ignorance were rated as the main problems of access to courts in oil related cases. There were indications that intimidation by the government as well as oil companies is a more important barrier to justice for village communities suing oil companies than it is for other potential litigants. This supports the view that the Nigerian regime is biased in favour of oil companies. Survey analysis also indicated that the judiciary and the legal process tended to be biased in favour of oil companies rather than the opposing litigants and that judges encounter greater outside pressures in oil related litigation. This bias manifests itself, for instance, in the inadequate payment of compensation for damage from oil operations awarded by Nigerian courts.

The existence of these biases was not surprising given the speculative finding of the contextual chapters that the Nigerian state tended to favour oil companies although this may ultimately contribute to triggering violent responses from village communities. The constraints faced by individual and community litigants can help to explain why village communities may abandon litigation in favour of extra-legal forms of protest.

The persistence of conflicts between oil companies and village communities can be partly explained by externalities caused by oil operations on the ground. Section five analysed the nature of those externalities by focusing on the impact of oil exploration and production on village communities including the resulting environmental damage. We have found evidence that the traditional operating practices of the oil companies combined with their unwillingness to commit funds towards environmental protection have prompted disputes between oil companies and village communities. It is clear that only some of these disputes have resulted in litigation. From an economic perspective, it is somewhat surprising that oil companies have continued to create a number of externalities which could have easily been avoided with small expenditure on their part. An analysis of the nature of oil related externalities in Nigeria suggests that many economic activities of the oil industry cannot be adequately understood without reference to cultural attitudes which may prevent otherwise rational economic choices.

Considering the importance of externalities from oil operations and the bias of the legal system, one could expect that the existing court cases between village communities and oil companies are only a small fraction of the potential litigation, which could arise as a result of valid legal claims to compensation for damage from oil operations. In other

words, if the Nigerian legal system were less predisposed in favour of oil companies, then the quantity of litigation against oil companies would be likely to rise. This speculation of a suppression of litigation against oil companies lends support to the hypothesis that difficulties in obtaining legal recourse may have contributed directly and indirectly to informal forms of conflict such as seizure of oil industry equipment or the kidnapping of oil company staff. These activities are undesirable from the point of view of oil companies. But it could be expected that they are also partly caused by the companies' use of their superior resources to frustrate the legal claims of village communities. The resulting paradox is that the companies' ability to stifle one form of protest may lead to different, perhaps more troublesome, forms of protest.

On the surface, it may seem surprising that, despite severe barriers to justice and despite the bias of the legal system in favour of oil companies, the frequency of litigation between oil companies and village communities has substantially increased in the 1990s. This seeming paradox could be attributed to a number of factors including state fragmentation on the micro-level, public pressures and the dynamic character of Nigeria's legal system. For instance, several respondents indicated that a number of judges have become more sympathetic to the claims of village communities than judges of the past.

Nonetheless, the bias of the legal system and the rentier nature of the Nigerian state remain important obstacles in terms of access to courts for those affected by oil operations. We have, therefore, speculated that there may be other reasons why oil related litigation has increased in the 1990s. It was expected that a shift in judicial



pronouncements in favour of village communities played a role in encouraging a greater quantity of litigation against oil companies.

Section six of the thesis, which provided a detailed analysis of litigation between oil companies and village communities, largely confirmed the initial expectation that legal innovations in oil related cases have benefited village communities. The success of litigants in oil related cases was limited because oil companies were able to use a number of substantive and procedural rules as effective legal defences. But there has been a trend towards the adoption of rules which render it easier for village communities to litigate against oil companies. Above all, village communities have recently been awarded higher compensation payments for damage from oil operations following the ruling in *Shell v. Farah*<sup>1</sup>. We speculated that the key factor in legal change in oil related litigation was probably the judges' changing social attitudes towards the allocation of the benefits and externalities arising from oil operations in Nigerian society. This would support our initial assumption that court judgments reflect the economic and social changes in society. Following the same logic, the higher compensation payments to village communities could be assumed to reflect society's greater preoccupation with the plight of the village communities in the oil producing areas. The increased possibility of higher compensation payments may partly explain the rise in oil related litigation in the 1990s. In this context, this thesis not only portrays the legal disputes between village communities and oil companies but also the legal dynamics underlying those disputes.

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<sup>1</sup> [1995] 3 NWLR.

## **7.2. Relevance of the Thesis**

It may be held that a study of legal disputes in the Nigerian oil industry is an irrelevant and futile exercise, given the assumption that there is no rule of law in Nigeria and that the judiciary is little more than an extended arm of the executive branch of the federal government. The evidence presented in this thesis, however, demonstrated such a judgment to be superficial and a mistaken one which fails to take full account of the complex nature of the judicial process in Nigeria, dynamic processes of legal change and the possibility of using court cases as factual evidence. While our findings differ from some of the conventional analyses in the literature, they have not necessarily been unexpected. In this sense, the originality of this thesis does not stem so much from unanticipated new insights on the nature of multinational business or legal systems in developing countries but rather from its socio-legal approach and from its treatment of a hitherto neglected subject.

Above all, our analysis has been guided by the perception of a lack of a socio-legal study on the legal disputes between oil companies and village communities in Nigeria and the role of the legal system as mediator and adjudicator. We have been able to identify a number of the sources of those disputes, particularly in terms of externalities arising from oil operations on the ground (see section five). The core chapters of the thesis (sections four and six) have provided an analysis of the legal system in the light of oil related litigation. The discussion of legal transformation in oil related litigation has contributed to an understanding of a subject which has either been overlooked or simply neglected in academic publications. With regards to the academic writings on the

Nigerian oil industry in general, our analysis has filled a gap in the literature. It may serve as a starting point for further future research on conflicts between oil companies and village communities in Nigeria.

Our socio-legal analysis, particularly in section four, was also motivated by the perception of a gap in scholarly knowledge on African legal systems. This gap arises not so much in terms of an analysis of the substantive elements of African law, but rather in terms of the day-to-day operations of the legal system. This problem is particularly significant in the context of legal disputes between multinational companies and the local populace in developing countries. Legal studies on Africa have hitherto largely ignored the socio-legal context of law such as the problems of access to courts for potential litigants or the actual enforcement of legislation on the ground. They have largely confined their analyses to the formal legal process and/or the analysis of sources of law. In its modest way, our survey has sought to shed light on the legal processes associated with the interaction between village communities and oil multinationals. The methodology adopted in the survey has allowed us to quantify the hierarchy of access problems as perceived by Nigerian legal practitioners and to quantitatively assess the extent of the practical impediments in the day-to-day operations of the legal system. We believe that only an interdisciplinary framework such as the one devised for this thesis can fully account for the legal disputes between the companies and the local people, which is not offered by either a purely socio-economic or a purely legal study.

One of the goals of the thesis was to make a contribution to the research and the debate on the role of multinational companies in developing countries in the field of

litigation. While numerous studies have addressed the role of multinational companies, there is still ample need to analyse the interactions between those affected by business operations and the companies, particularly in the field of litigation. In contrast to the field study method and macro-analytical studies, we have utilised court cases to portray conflicts between oil companies and village communities and the legal dynamic underlying those conflicts. We have used court cases as factual evidence and as legal material which has allowed a more in-depth analysis than conventional legal studies which limit their analysis of litigation to a discussion of substantive and procedural rules. In addition to the investigation of substantive and procedural rules, our socio-legal analysis of litigation has served as a window to an understanding of the sources of disputes and non-legal forms of disputes.

### **7.3. Directions for Future Research**

As we have noted at the outset of this project, legal materials are not the only source of information on conflicts between oil companies and village communities. In this context, it may be instructive to consider the merits of potential alternative avenues for future research. Our discussion of legal materials could be complemented by alternative methodological approaches.

One of those alternative approaches would be a comprehensive sociological and social-anthropological field study of village communities in the oil producing areas. Such a study could investigate in greater detail the effects of oil operations on village communities on the ground such as the migration of oil workers and the resulting shifts in

cultural attitudes. More importantly, a field study could examine the motivations of villagers when engaging in conflicts with oil companies. Issues discussed could include the villagers' perception of economic inequality in Nigerian society and their lack of political opportunities. In the context of oil related litigation, a field study could highlight barriers to justice as perceived by community members. In general, it could analyse extra legal forms of dispute resolution including informal negotiations and settlements. A study of this nature would potentially allow for the development of a comprehensive model of social protest in village communities which would take into account all correlates of conflicts between companies and communities. Prior field research on village communities in the oil producing areas has failed to adequately identify why villagers engage in conflicts with companies.

Another alternative approach would be to analyse the internal workings of business organisations with a view to an understanding of the motivations of company staff when choosing a specific strategy to deal with conflicts. In particular, such a study could investigate the cultural attitudes of oil company staff towards village communities in the oil producing areas. Subsidiaries of multinational companies could be assumed to develop specific corporate cultures influenced by both the local cultures of the country in which they operate and by the cultural values transmitted from the corporate headquarters. Unfortunately, there appears to have been no prior academic research on the dynamics of cultural change in Nigeria's oil companies.

In terms of legal change, an alternative approach would be to survey Nigerian judges. Such a survey could investigate the motivations of judges when adjudicating legal

disputes. A study of this nature could potentially establish to what extent judicial decisions are influenced by the transformations in the wider society. Moreover, it could potentially explore the nature and scope of legal change as perceived by judicial officers.

In terms of public policy implications, there is a lack of prior academic research on institutional - state and company - responses to local conflicts. A cost-benefit analysis of different institutional responses could explore the alternative strategies pursued by oil companies in dealing with local conflicts and the financial costs attached to each of those strategies. Such a study, moreover, could investigate the implications of changes in the forms of protest adopted by village communities vis-à-vis oil companies. For instance, one could explore the implications for oil companies of a shift from one form of protest (e.g. litigation) towards another form of protest (e.g. vandalism).

While many benefits could be gained from the aforementioned methodological approaches, particularly from the anthropological and sociological perspective, there are problems with these methodologies. Interviews and written sources may be biased or ill-informed and, in any case, reflect personal perceptions of the issues. Data on the oil industry is generally thought to be particularly vulnerable to manipulation for a number of reasons (Stevens 1995). Data gained from field studies can be very subjective as the number of objects of study may be highly limited, unless a standardised survey is used, a strategy which is likely to be difficult in a village setting in Nigeria. For practical reasons, it may be difficult to find a sufficient number of respondents for conducting a survey amongst judges because there are fewer judicial officers than legal practitioners and access to them is likely to be limited for an outside researcher. In comparison with the

above methodologies, the methodology adopted in this thesis hence has the advantage of providing a consistent framework of analysis and a wealth of reliable legal materials.

Beyond our immediate concern with conflicts arising from oil operations in Nigeria, our analysis suggests a number of avenues for future research on conflicts between business organisations and the local populace in developing countries.

Our research highlights the importance of further study of litigation and of legal change in relation to disputes between companies and the local populace in developing countries. With the rise in litigation against multinational companies in those countries, scholars can no longer neglect the study of the dynamics of legal systems in relation to multinational investment. Recognising the capacity of the Nigerian judiciary to act autonomously from the executive arm of the government would weaken the temptation of scholars in the African Studies field to dismiss legal systems as unworthy of study. We hope that this thesis has served to undermine the mechanistic view that the judiciary in Africa, as an integral part of the state structures, lacks a dynamic of its own. Relinquishing this conceptualisation of the judiciary will not only allow scholars to make greater use of litigation in the analysis of social conflicts but also to re-discover the study of legal systems and their underlying dynamics.

Future research on the disputes between the local populace affected by business operations and firms in developing countries could make greater use of litigation as an alternative to the study of open conflict. While this thesis has not attempted to explicitly formulate a methodological tool of analysis, we feel that a study of litigation should combine an investigation of the social context, a discussion of the day-to-day operations



of the legal system and a detailed analysis of oil related litigation, both in terms of factual evidence and legal principles. We believe that such an interdisciplinary mixture can provide explanations which are both causally and meaningfully adequate in the Weberian sense.

Our socio-legal approach could be modified to the study of conflicts in other regions and in respect of other issues. Our research focused on the Nigerian legal system. This has demonstrated a capacity to act autonomously from the executive arm of the government. Could the same methodology be applied to a country with significantly less developed legal institutions and a judiciary more dependent on the executive arm of the government? We focused on conflicts between oil companies and the local populace in rural areas. To what extent could the same methodology be applied to an analysis of employment-related conflicts or to conflicts arising from externalities from business operations in urban areas? We had at our disposal a significant number of court cases which illustrated the analysed conflicts. To what extent could the same methodology be applied if a researcher had at his or her disposal a significantly smaller number of court cases? With the rise in litigation between multinational companies and indigenous populations the need for a rigorous methodology to analyse these legal disputes is perhaps evident. Hence, the ultimate contribution of this thesis could be to lay the foundations for the study of a hitherto neglected subject.

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*Daily Champion* (Lagos)

*Daily Times* (Lagos)

*Delta Magazine* (Leicester)

*Financial Times* (London)

*Guardian* (Lagos)

*Guardian* (London)

*Inter-Press Service* (Washington/New York)

*NewReport Journal* (Lagos)  
*Newswatch* (Lagos)  
*Observer* (London)  
*Oil & Gas Update* (Lagos)  
*Petroleum Economist* (London)  
*Petroleum Intelligence Weekly* (New York)  
*Phone News International* (London)  
*Platt's Oilgram* (New York)  
*Platt's Petroleum Insight* (New York)  
*PostExpress* (Lagos)  
*Punch* (Lagos)  
*Reuters* (London)  
*Spiegel* (Hamburg)  
*Tell* (Lagos)  
*ThisDay* (Lagos)  
*Vanguard* (Lagos)  
*Weekly Petroleum Argus* (London)  
*World Gas Intelligence* (New York)

## **APPENDIX A**

# **List of Oil Companies with Oil Mining Leases and Oil Prospecting Licences in Nigeria, January 1998**

(Source: Petroconsultants 1998)

## List of Right Holders

November 1997

Group Abbr.	Partners (*operator)	Interests (%)	Licence Name	sq km held as of 12 January 1998
ADDAX	*Addax Petroleum Ltd	100.000	OPL 901 OPL 903	2,320.00 2,450.00 ----- 4,770.00
AFRIC OIL 1	*Afric Oil & Marketing Camac Int'l (Nigeria) Ltd	97.500 2.500	OPL 204	1,500.00
AGIP 1	*Nigerian Agip Oil Co Ltd (NAOC) Nigerian National Petroleum Co Phillips Oil Co (Nigeria) Ltd	20.000 60.000 20.000	OML 60 OML 61 OML 62 OML 63	357.00 1,393.00 1,256.00 2,253.00 ----- 5,259.00
AGIP 3	*Nigerian Agip Oil Co Ltd (NAOC) Amoco Corp	65.000 35.000	OPL 211 OPL 316	2,700.00 2,000.00 ----- 4,700.00
AGIP EN 1	*Agip Energy & Natural Resource Nigerian National Petroleum Co	0.000 100.000	OPL 472	360.00
ALLIED EN 1	*Allied Energy Resources Ltd British Petroleum Co Den Norske Stats Oljeselskap	60.000 20.000 20.000	OPL 210	1,700.00
AMALGAM	*Amalgamated Oil Ltd	100.000	OPL 452	520.00
AMNI 1	*Amni Int'l Petroleum Dev Co Abacan Int'l Resources Corp	60.000 40.000	OPL 237 OPL 469	51.00 440.00 ----- 491.00
AREWA	*Arewa	100.000	OPL 841	2,560.00
ARIES	*First Aries	100.000	OPL 235	1,280.00

# **List of Right Holders** November 1997

Group Abbr.	Partners (*operator)	Interests (%)	Licence Name	sq km held as of 12 January 1998
ATLAS 1	*Atlas Petroleum (Nigeria) Ltd Canadian Occidental Petroleum Profco Resources Ltd Summit Partners Management Co	60.000 20.000 10.000 10.000	OML 109	785.00
BRASS	*Brass Petroleum	100.000	OPL 208	1,880.00
CAVENDISH 1	*Cavendish Petrol. Nigeria Ltd Tuskar Resources Plc Camac Int'l (Nigeria) Ltd	57.500 40.000 2.500	OML 110	966.00
CHEVRON	*Chevron Petroleum Nigeria Ltd	100.000	OPL 801 OPL 805 OPL 810 OPL 812 OPL 813 OPL 814	2,582.00 2,582.00 2,582.00 2,090.00 2,582.00 2,582.00 ----- 15,000.00
CHEVRON 1	*Chevron Petroleum Nigeria Ltd Nigerian National Petroleum Co	40.000 60.000	OML 49 OML 50 OML 51 OML 52 OML 53 OML 54 OML 55 OML 89 OML 90 OML 91 OML 95	1,645.00 699.00 150.00 246.00 1,554.00 1,153.00 777.00 420.00 655.00 163.00 1,264.00 ----- 8,726.00
CONS OIL	*Consolidated Oil Ltd	100.000	OML 103 OPL 458	950.00 1,600.00 ----- 2,550.00
CRESCENT	*Crescent City	100.000	OPL 234	1,380.00



## List of Right Holders

November 1997

Group Abbr.	Partners (*=operator)	Interests (%)	Licence Name	sq km held as of 12 January 1998
CROWNWELL	*Crownwell	100.000	OPL 305 OPL 306	1,350.00 1,970.00 ----- 3,320.00
DANIA	*Dania	100.000	OPL 236	1,160.00
DEVINE	*Devine	100.000	OPL 307 OPL 312	1,190.00 1,870.00 ----- 3,060.00
DU PONT 1	*Du Pont E & P No 13 B.V. Esso E & P Nigeria Ltd (EEP) Medal Oil Nigeria Ltd	47.500 47.500 5.000	OPL 220	2,421.00
DUBRI	*Dubri Oil Ltd	100.000	OML 96	232.00
ELF 1	*Elf Petroleum Nigeria Ltd Nigerian National Petroleum Co	40.000 60.000	OML 100 OML 101 OML 102 OML 56 OML 57 OML 58 OML 59 OML 99 OPL 447	717.00 504.00 796.00 1,272.00 428.00 518.00 835.00 655.00 5,202.00 ----- 10,927.00
ELF 3	*Elf Petroleum Nigeria Ltd Chevron Petroleum Nigeria Ltd Esso E & P Nigeria Ltd (EEP)	40.000 30.000 30.000	OPL 222 OPL 223 OPL 802 OPL 804 OPL 807	1,812.69 1,043.86 2,583.68 2,586.23 2,588.77 ----- 10,615.23
ESSO 1	*Esso E & P Nigeria Ltd (EEP) Amoco Corp	80.000 20.000	OPL 209	2,200.00

# List of Right Holders November 1997

Group Abbr.	Partners (*=operator)	Interests (%)	Licence Name	sq km held as of 12 January 1998
EXPRESS 1	*Express Petroleum & Gas Co Ltd Du Pont Nigeria Camac Int'l (Nigeria) Ltd	57.500 40.000 2.500	OML 108	500.00
FAMFA 1	*Famfa Oil Ltd Texaco Overseas(Nigeria)Pet.Co	60.000 40.000	OPL 216	2,550.00
GEN OIL	*General Oil Ltd	100.000	OPL 304	1,580.00
IPEC	*Int'l Petro-Energy Co Ltd	100.000	OPL 202 OPL 229	1,930.00 1,460.00 ----- 3,390.00
JAMES PET 1	*Alfred James Petroleum Co Ltd Abacan Int'l Resources Corp	60.000 40.000	OPL 302	1,900.00
JEREZ	*Jerez Energy Inc	100.000	Concession II	1,898.00
LAMONT	*Lamont	100.000	OPL 207	1,700.00
MAREENA	*Mareena Petroleum Ltd	100.000	OPL 231	237.00
MOBIL 1	*Mobil Producing Nigeria Nigerian National Petroleum Co	40.000 60.000	OML 67 OML 68 OML 69 OML 70 OPL 094	1,222.00 122.00 44.00 1,264.00 680.00 ----- 3,332.00
MOBIL 4	*Mobil Producing Nigeria Amoco Corp	50.000 50.000	OPL 221	2,287.00
MONCRIEF	*Moncrief Oil International Ltd	100.000	OPL 471	1,375.00

## List of Right Holders

November 1997

Group Abbr.	Partners (*operator)	Interests (%)	Licence Name	sq km held as of 12 January 1998
MONI PULO 1	*Moni Pulo Ltd Brass Exploration Ltd	60.000 40.000	OPL 230	290.00
NAPIMS	*Nat.Pet.Invest.Management Serv	100.000	OPL 417 OPL 418 OPL 419 OPL 420 OPL 421 OPL 422 OPL 423	1,800.00 3,500.00 5,300.00 3,900.00 4,600.00 3,500.00 1,400.00 ----- 24,000.00
NBC	*Nigerian Bitumen Corp	100.000	OPL 474	5,800.00
NIMA	*Nima Minerals E & P	100.000	OPL 203	2,440.00
NNPC	*Nigerian National Petroleum Co	100.000	OPL 098 OPL 118	385.00 305.00 ----- 690.00
NOREAST	*Noreast Petroleum Nigeria Ltd	100.000	OPL 840 OPL 902	2,535.00 2,450.00 ----- 4,985.00
NOREAST 1	*Noreast Petroleum Nigeria Ltd Mobil Producing Nigeria	60.000 40.000	OPL 215	2,428.00
NPDC	*Nigerian Petroleum Develop. Co	100.000	OML 111 OPL 091	450.00 720.00 ----- 1,170.00
NPDC 1	*Nigerian Petroleum Develop. Co Tenneco Oil of Nigeria Sun DX Nigeria	80.000 15.000 5.000	OML 64 OML 65 OML 66	276.00 1,026.00 153.00 ----- 1,455.00

# List of Right Holders

November 1997

Group Abbr.	Partners (*=operator)	Interests (%)	Licence Name	sq km held as of 12 January 1998
OBEKPA	*Obekpa	100.000	OPL 241	1,300.00
OPTIMUM 1	*Optimum Petroleum Dev.Co Ltd Abacan Int'l Resources Corp	60.000 40.000	OPL 310	1,850.00
ORIENT 1	*Oriental Energy Resources Ltd Camac Int'l (Nigeria) Ltd	97.500 2.500	OPL 224	305.00
PANOCO 1	*Pan Ocean Oil Co (Nigeria) Ltd Nigerian National Petroleum Co	40.000 60.000	OML 98	503.00
PEAK 1	*Peak Petroleum Ind. Nigeria Lt NTI Resources Ltd	60.000 40.000	OPL 460	1,632.00
PET PROD 1	*Petroleum Products Abacan Int'l Resources Corp	60.000 40.000	OPL 233	127.00
QUEEN PET 1	*Queens Petr Co Nigeria Ltd Geo Int'l	60.000 40.000	OPL 135 OPL 228	820.00 1,960.00
SEAWOLF	*Seawolf	100.000	OPL 907	2,780.00
SHELL 1	*Shell Pet. Dev. Co of Nigeria Nigerian National Petroleum Co Elf Petroleum Nigeria Ltd Nigerian Agip Oil Co Ltd(NAOC)	30.000 55.000 10.000 5.000	OML 01 OML 04 OML 05 OML 07 OML 11 OML 13 OML 14 OML 15 OML 16 OML 17 OML 18 OML 19 OML 20 OML 21 OML 22 OML 23	870.00 267.00 544.00 408.00 3,096.00 1,987.00 524.00 31.00 104.00 1,299.00 1,035.00 92.00 410.00 356.00 723.00 483.00

## List of Right Holders

November 1997

Group Abbr.	Partners (*=operator)	Interests (%)	Licence Name	sq km held as of 12 January 1998
----------------	-----------------------	---------------	--------------	-------------------------------------

SHELL 2	*Shell Nigeria E&PCoLtd (Snepco) Esso E & P Nigeria Ltd (EEP) Elf Petroleum Nigeria Ltd Nigerian Agip Oil Co Ltd (NAOC)	55.000 20.000 12.500 12.500	OML 24	161.00
			OML 25	430.00
			OML 26	480.00
			OML 27	165.00
			OML 28	942.00
			OML 29	982.00
			OML 30	1,098.00
			OML 31	563.00
			OML 32	565.00
			OML 33	339.00
			OML 34	953.00
			OML 35	1,144.00
			OML 36	338.00
			OML 38	2,151.00
			OML 39	368.00
			OML 40	497.00
			OML 41	291.00
			OML 42	814.00
			OML 43	768.00
			OML 44	122.00
			OML 45	76.00
			OML 46	1,079.00
			OML 71	116.00
			OML 72	1,129.00
			OML 74	1,250.00
			OML 77	962.00
			OML 79	971.00
			OML 81	135.00
-----				
31,118.00				
SHELL 2	*Shell Nigeria E&PCoLtd (Snepco) Esso E & P Nigeria Ltd (EEP) Elf Petroleum Nigeria Ltd Nigerian Agip Oil Co Ltd (NAOC)	55.000 20.000 12.500 12.500	OPL 212	2,333.24
			OPL 219	1,851.46
			OPL 803	2,583.18
			OPL 806	2,586.00
			OPL 809	2,581.00
-----				
11,934.88				

# List of Right Holders

November 1997

sq km held as of  
12 January 1998

Group  
Abbr.

Partners (\*=operator)

Interests (%) Licence Name

1,500.00

OPL 226

60.000  
40.000

\*Solgas Petroleum Ltd  
Niko Resources Ltd

SOLGAS 1

1,609.44  
2,401.24  
2,048.44

OPL 213  
OPL 217  
OPL 218

35.000  
35.000  
30.000

\*Den Norske Stats Oljeselskap  
British Petroleum Co  
Texaco Overseas (Nigeria) Pet. Co

STATOIL 1

6,059.12

2,130.00  
2,310.00

OPL 205  
OPL 206

100.000

\*Summit Oil International Ltd

SUMMIT O

4,440.00

96.00  
2,080.00

OPL 238  
OPL 311

100.000

\*Sunlink Petroleum Ltd

SUNLINK

2,176.00

111.00  
176.00  
546.00  
536.00  
383.00  
818.00

OML 83  
OML 84  
OML 85  
OML 86  
OML 87  
OML 88

20.000  
60.000  
20.000

\*Texaco Overseas (Nigeria) Pet. Co  
Nigerian National Petroleum Co  
Chevron Oil Co (Nigeria) Ltd

TEXACO 1

2,570.00

900.00

OPL 227

100.000

\*Ultramar Int'l Energy Ltd

ULTRAMAR

1,600.00

OPL 309

60.000  
40.000

\*Yinka Folaioyo Petroleum Co  
Abacan Int'l Resources Corp

YINKA 1

154,394.86  
37,283.00  
33,766.37

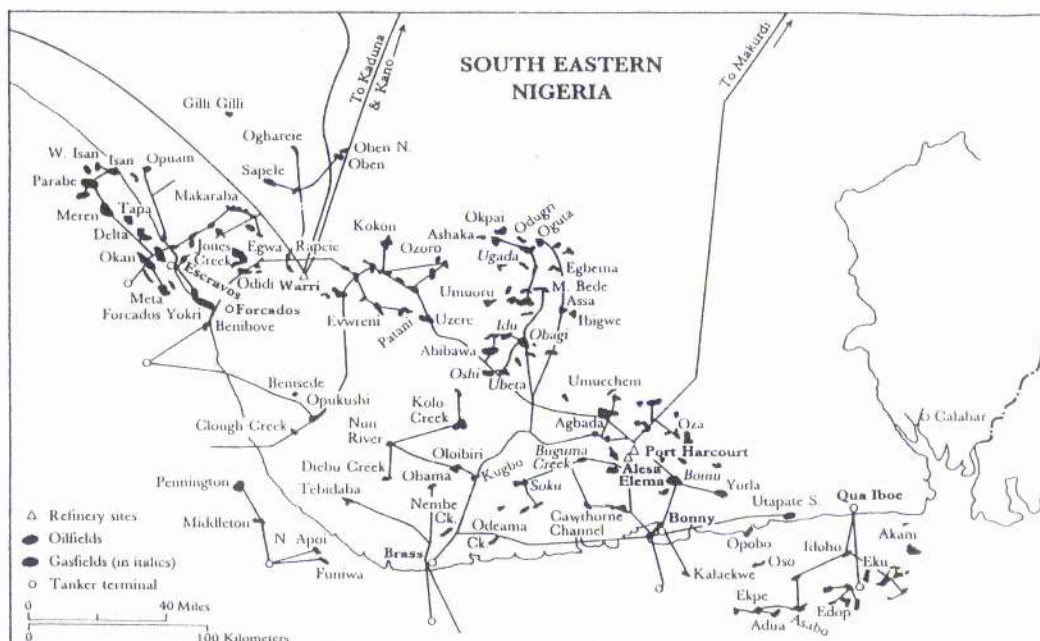
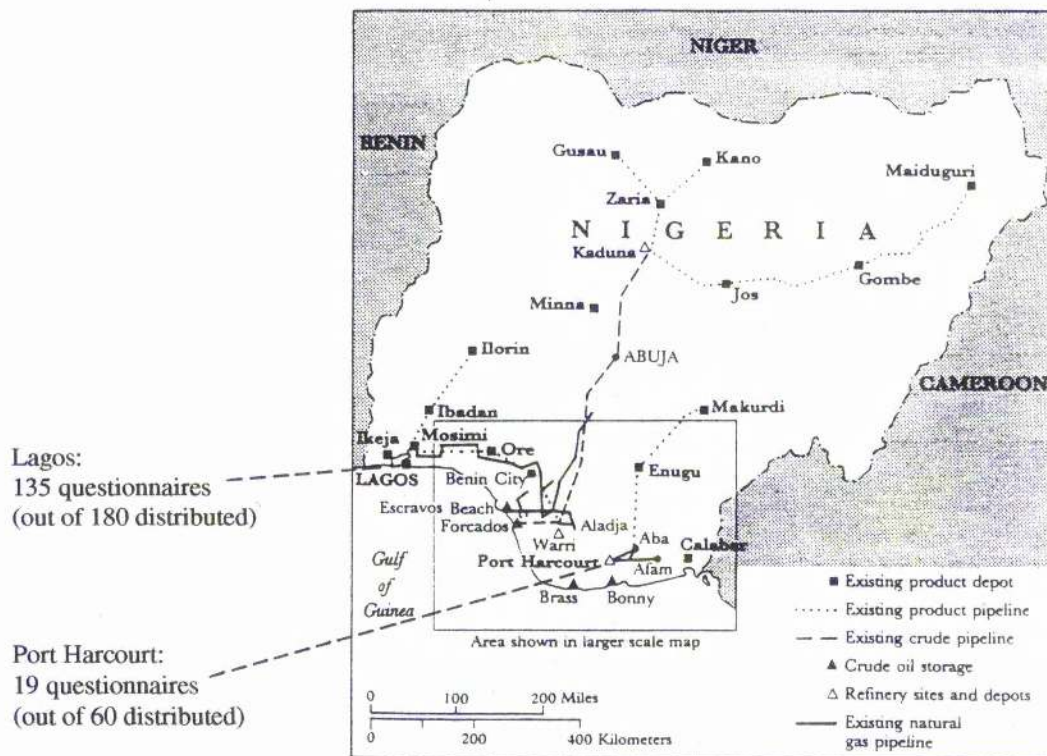
Total Acreage Onshore :  
Total Acreage Shelf:  
Total Acreage Deep :

**APPENDIX B**

**1998 Survey of Legal Practitioners in  
Nigeria: Map, Survey Design and  
Remaining Statistical Tables**



## Map of Nigeria: Distribution of the Survey in Lagos and Port Harcourt



Source: Khan (1994).

## Survey of Nigerian lawyers

Your views are very important for this survey. You can help to assess the condition of the legal profession in Nigeria. Please fill in the following 16 questions. It should only take approx. 10 minutes of your time. Your answers will be kept anonymous and confidential.

1. What is your Birth Year?

19 \_\_\_\_\_

2. Are you

☐ Male

☐ Female

3. When were you called to the Bar?

19 \_\_\_\_\_

4a. What is the approx. size of your law firm and/or organization including support staff?

\_\_\_\_\_

4b. How many persons would you categorize as support staff?

\_\_\_\_\_

5. What are you specialised in?

☐ Criminal law

☐ Civil law

☐ Environmental law

☐ Commercial law

☐ Other

Please feel free to be more specific

.....  
.....  
.....  
.....  
.....  
.....

6a. Has your work involved contacts with an oil company?

☐ yes

☐ no

6b. Have you acted as

☐ counsel for an oil company, its subsidiary or a contractor

☐ counsel in a lawsuit against an oil company

(tick both if applicable)

7a. In your professional experience, would you say that there are difficulties in the enforcement of court orders, rulings or judgments?

☐ very severe problems

☐ severe problems

☐ some difficulties

☐ minor difficulties

☐ no difficulties

7b. Are the difficulties more or less severe in oil company related litigation?

☐ much more severe

☐ greater

☐ the same

☐ less severe

☐ much less severe

☐ don't know

8a. In your professional experience, would you say that lawyers, judges or other judicial officers encounter outside pressures from private or public institutions in their work?

☐ very often

☐ often

☐ sometimes

☐ rarely

☐ never

**8b. Are these pressures more or less severe in oil company related litigation?**

- ☐ much more severe
- ☐ greater
- ☐ the same
- ☐ less severe
- ☐ much less severe
- ☐ don't know

**9a. In your professional experience, are litigants treated fairly in court decisions involving oil companies?**

- ☐ very fairly
- ☐ fairly
- ☐ neither fairly nor unfairly
- ☐ unfairly
- ☐ very unfairly
- ☐ don't know

**9b. Do you think oil companies, their subsidiaries and contractors conduct themselves ethically in court proceedings?**

- ☐ very often
- ☐ often
- ☐ sometimes
- ☐ rarely
- ☐ never
- ☐ don't know

**9c. Would you say that courts are biased in favour of the oil company or the opposing litigant?**

- |   |   |
|---|---|
| <input type="checkbox"/> severe bias in favour of oil company | <input type="checkbox"/> severe bias in favour of opposing litigant |
| <input type="checkbox"/> some bias in favour of oil company   | <input type="checkbox"/> some bias in favour of opposing litigant   |
| <input type="checkbox"/> no bias in favour of oil company     | <input type="checkbox"/> no bias in favour of opposing litigant     |
| <input type="checkbox"/> don't know                           | <input type="checkbox"/> don't know                                 |

[please tick one field on each side]

**9d. Amongst the following, rank reasons [1=very important reason, 2=important reason, 3=less important reason] why courts might encounter difficulties in judging oil related cases fairly?**

- \_\_\_\_\_ lack of knowledge on oil technology
- \_\_\_\_\_ lack of funds
- \_\_\_\_\_ lack of time
- \_\_\_\_\_ outside pressures
- \_\_\_\_\_ resources and skill of oil company's counsel
- \_\_\_\_\_ lack of witnesses
- \_\_\_\_\_ incompetence of witnesses

[feel free to use the same number as often as you wish or simply ignore specific fields]

**10. In your professional experience, would you consider the compensation paid by oil companies for damages in tort as**

- ☐ unfair to oil companies as much too high
- ☐ unfair to oil companies as somewhat too high
- ☐ fair and justified
- ☐ unfair to opposing litigant as somewhat too low
- ☐ unfair to opposing litigant as much too low
- ☐ don't know

**11a. Have you encountered instances in which potential litigants have been discouraged from legal action although they had a valid claim to compensation, an injunction or another form of legal recourse?**

- ☐ very often
- ☐ often
- ☐ sometimes
- ☐ rarely
- ☐ never
- ☐ don't know

**11b. Amongst the following, rank reasons [1=very important reason, 2=important reason, 3=less important reason] which you think would prevent a potential litigants from seeking legal recourse?**

- \_\_\_ ignorance of legal rights
- \_\_\_ lack of funds
- \_\_\_ lack of general education
- \_\_\_ geographical distance to courts
- \_\_\_ intimidation by tort-feasors
- \_\_\_ intimidation by public bodies
- \_\_\_ organisational structure of villages
- \_\_\_ uncertainty about the potential success of a suit
- \_\_\_ delay in the disposal of cases by courts
- \_\_\_ ethnic origin
- \_\_\_ living in a rural area
- \_\_\_ being a woman
- \_\_\_ young age

[feel free to use the same number as often as you wish or simply ignore specific fields]

**11c. In your opinion are the problems particularly severe in oil related litigation?**

- ☐ much less severe
- ☐ less severe
- ☐ the same
- ☐ more severe
- ☐ much more severe
- ☐ don't know

Please feel free to be more specific

.....

.....

.....

.....

**12. In your professional experience, which areas of law have undergone changes since you were called to the Bar?**

	no change	some change	major change	don't know
Criminal law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Civil law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Environmental law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Commercial law	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please feel free to be more specific

.....

.....

.....

**13. Do you think that the following piece of legislation has been effectively enforced?**

	not enforced	partially effectively enforced	don't know
Petroleum Act 1969	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FEPA Decree 1988 <sup>1</sup>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OMPADEC Decree 1992 <sup>2</sup>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Land Use Act 1978	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gas Re-Injection Act 1979	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<sup>1</sup> Federal Environmental Protection Agency (FEPA)

<sup>2</sup> Oil Mineral Producing Areas Developm. Commission

**14. The Eso Panel in 1994 submitted a report on the situation of the judiciary. Do you agree/disagree with the following findings of the Panel? For each statement, give a rating between 1 and 5 [1 = strongly disagree, 5=strongly agree]**

- \_\_\_ the judiciary is too dependent on the executive arm of the Government
- \_\_\_ the appointment of judges is too arbitrary
- \_\_\_ the funding of the legal system is too little
- \_\_\_ congestion in the courts is too high

15. Do you agree/disagree with the following statement? [1 = strongly disagree, 5=strongly agree]

\_\_\_\_\_ typed transcripts of court judgements are usually written competently

16a. Do you think that there are major differences in the quality of judicial services in different Nigerian courts?

☐ yes

☐ no

16b. Which type of court would you judge as particularly competent or incompetent?

	very competent	competent	incompetent	don't know
Supreme Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Court of Appeal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Federal High Court	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
State High Courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Magistrates Courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Customary Courts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Do you have additional comments you would like to make? Please write below or attach pages if you want.

## To 4.4. Profile of Respondents

**Table B.1. Age of Respondents**

Age Group	Percentage of Respondents	Cumulative Percentage
25-30	17.5	17.5
31-35	32.5	50.0
36-40	21.4	71.4
41-45	13.0	84.4
46 and over	10.4	94.8
No response	5.2	100.00
Total	100.00	100.00

**Table B.2. Years of Professional Experience of Respondents**

Years of Experience	Percentage of Respondents	Cumulative Percentage
1-5	19.5	19.5
6-10	40.9	60.4
11-15	18.2	78.6
16-20	13.0	91.6
21 and more	8.4	100.0
Total	100.0	100.0

**Table B.3. Size of Law Firm**

Number of Staff	Percentage of Respondents	Cumulative Percentage
1-5	13.0	13.0
6-10	43.5	56.5
11-15	18.8	75.3
16-20	4.5	79.8
21-25	3.9	83.7
26 and more	10.4	94.1
No response	5.8	99.9
Total	99.9	99.9

**Table B.4. Number of Support Staff**

Number of Staff	Percentage of Respondents	Cumulative Percentage
0	0.6	0.6
1-5	61.0	61.6
6-10	15.6	77.2
11-15	11.0	88.2
16 and more	4.5	92.7
No response	7.1	99.8
Total	99.8	99.8

**Table B.5. Professional Specialisation of Respondents (per cent)**

	Criminal law	Civil law	Environmental law	Commercial law	Other
Specialised	19.5	60.4	30.5	66.2	9.1
Not specialised	65.5	24.7	54.5	18.8	76.0
Unclassifiable/No Response	14.9	14.9	14.9	14.9	14.9

## To 4.6. Views on Access to Courts According to Different Groups

**Table B.6. Answers to questions 3 and 11b: Responses according to professional experience of lawyers on ethnic origin as a problem of access to courts (per cent)**

	very important reason	important reason	less important reason
Lawyers with 1-5 years of experience	20.8	20.8	58.3
Cumulative Percentage	20.8	41.6	99.9
Lawyers with 6-10 years of experience	9.4	30.2	60.4
Cumulative Percentage	9.4	39.6	100.0
Lawyers with 11-15 years of experience	13.0	26.1	60.9
Cumulative Percentage	13.0	39.1	100.0
Lawyers with 16-20 years of experience	35.0	40.0	25.0
Cumulative Percentage	35.0	75.0	100.0
Lawyers with 21 and more years of experience	36.4	63.6	0
Cumulative Percentage	36.4	100.0	100.0



**Table B.7. Answers to questions 1 and 11b: Responses according to age of lawyers on ethnic origin as a problem of access to courts (per cent)**

	very important reason	important reason	less important reason
Lawyers between 25 and 30 years old	8.0	20.0	72.0
Cumulative Percentage	8.0	28.0	100.0
Lawyers between 31 and 35 years old	7.7	23.1	69.2
Cumulative Percentage	7.7	30.8	100.0
Lawyers between 36 and 40 years old	27.6	31.0	41.4
Cumulative Percentage	27.6	58.6	100.0
Lawyers between 41 and 45 years old	29.4	47.1	23.5
Cumulative Percentage	29.4	76.5	100.0
Lawyers 46 years old and over	30.8	61.5	7.7
Cumulative Percentage	30.8	92.3	100.0

## To 4.9. Types of Courts

**Table B.8. Answers to questions 5 and 16a: Responses of commercial lawyers on whether there are major differences between the quality of judicial services in different types of courts (per cent)**

	There are major differences	There are no major differences
Commercial lawyers	94.7	5.3
Cumulative percentage	94.7	100.0
Other lawyers	78.6	21.4
Cumulative percentage	78.6	100.0

**Table B.9. Answers to questions 5 and 16b: Responses of commercial lawyers on whether the judicial services in the Federal High Court are competent (per cent)**

	Very competent	Competent	Incompetent
Commercial lawyers	8.6	84.9	6.5
Cumulative percentage	8.6	93.5	100.0
Other lawyers	8.7	69.6	21.7
Cumulative percentage	8.7	78.3	100.0

**Table B.10. Answers to question 16a: Responses of Lagos and Port Harcourt lawyers on whether there are major differences between the quality of judicial services in different types of courts (per cent)**

	There are major differences	There are no major differences
Lagos lawyers	70.6	29.4
Cumulative percentage	70.6	100.0
Port Harcourt lawyers	93.8	6.3
Cumulative percentage	93.8	100.1

**Table B.11. Answers to questions 3 and 16a: Responses according to professional experience of lawyers on whether there are major differences between the quality of judicial services in different types of courts (per cent)**

	There are major differences	There are no major differences
Lawyers with 1-5 years of experience	75.9	24.1
Cumulative percentage	75.9	100.0
Lawyers with 6 or more years of experience	94.8	5.2
Cumulative percentage	94.8	100.0

## **To 4.10. Oil companies and Court Procedure**

**Table B.12. Answers to questions 6b and 9a: Responses of oil company lawyers on whether litigants are treated fairly in court decisions involving oil companies**

	Very fairly	Fairly	Neither fairly nor unfairly	Unfairly	Very unfairly
Oil company lawyers	0	44.4	18.1	23.6	13.9
Cumulative percentage	0	44.4	62.5	86.1	100.0
Other lawyers	0	31.9	6.4	42.6	19.1
Cumulative percentage	0	31.9	38.3	80.9	100.0

**Table B.13. Answers to questions 5 and 9a: Responses of commercial lawyers on whether litigants are treated fairly in court decisions involving oil companies**

	Very fairly	Fairly	Neither fairly nor unfairly	Unfairly	Very unfairly
Commercial lawyers	2.5	34.2	16.5	30.4	16.5
Cumulative percentage	2.5	36.7	53.2	83.6	100.1
Other lawyers	4.5	63.6	9.1	22.7	0
Cumulative percentage	4.6	68.1	77.2	99.9	99.9

**Table B.14. Answers to questions 5 and 9a: Responses of environmental lawyers on whether litigants are treated fairly in court decisions involving oil companies**

	Very fairly	Fairly	Neither fairly nor unfairly	Unfairly	Very unfairly
Environmental lawyers	5.0	32.5	5.0	35.0	22.5
Cumulative percentage	5.0	37.5	42.5	77.5	100.0
Other lawyers	1.6	45.9	21.3	24.6	6.6
Cumulative percentage	1.6	47.5	68.8	93.4	100.0

**Table B.15. Answers to questions 6b and 9b: Responses of oil company lawyers on whether oil companies, their subsidiaries and contractors conduct themselves ethically in court proceedings**

	Very often	Often	Sometimes	Rarely	Never
Oil company lawyers	9.2	43.1	41.5	6.2	0
Cumulative percentage	9.2	52.3	90.8	100.0	100.0
Other lawyers	10.0	20.0	57.5	12.5	0
Cumulative percentage	10.0	30.0	87.5	100.0	100.0

**Table B.16. Answers to questions 5 and 9b: Responses of commercial lawyers on whether oil companies, their subsidiaries and contractors conduct themselves ethically in court proceedings**

	Very often	Often	Sometimes	Rarely	Never
Commercial lawyers	10.1	37.7	47.8	4.3	0
Cumulative percentage	10.1	47.8	95.6	99.9	99.9
Other lawyers	8.3	37.5	33.3	20.8	0
Cumulative percentage	8.3	45.8	79.1	99.9	99.9

**Table B.17. Answers to question 9b: Responses of Lagos and Port Harcourt lawyers on whether oil companies, their subsidiaries and contractors conduct themselves ethically in court proceedings**

	Very often	Often	Sometimes	Rarely	Never
Lagos lawyers	8.9	37.8	48.9	4.4	0
Cumulative percentage	8.9	46.7	91.1	100.0	100.0
Port Harcourt lawyers	13.3	13.3	40.0	33.3	0
Cumulative percentage	13.3	26.6	66.6	99.9	99.9

**Table B.18. Answers to questions 6b and 9c: Responses of oil company lawyers on whether courts are biased in favour of the opposing litigant**

	Severe bias in favour of opposing litigant	Some bias in favour of opposing litigant	No bias in favour of opposing litigant
Oil company lawyers	8.5	36.2	55.3
Cumulative percentage	8.5	44.7	100.0
Other lawyers	3.1	12.5	84.4
Cumulative percentage	3.1	15.6	100.0

**Table B.19. Answers to questions 6b and 9c: Responses of lawyers who acted as counsel in a lawsuit against an oil company on whether courts are biased in favour of the opposing litigant**

	Severe bias in favour of opposing litigant	Some bias in favour of opposing litigant	No bias in favour of opposing litigant
Lawyers who acted in a lawsuit against an oil company	3.8	13.5	82.7
Cumulative percentage	3.8	17.3	100.0
Other lawyers	11.1	51.9	37.0
Cumulative percentage	11.1	63.0	100.0

**Table B.20. Answer to questions 3 and 9d: Responses according to professional experience of lawyers on whether lack of funds is an important reason why courts might encounter difficulties in judging oil related cases fairly (per cent)**

	Very important reason	Important reason	Less important reason
Lawyers with 1-5 years of experience	31.8	22.7	45.5
Cumulative percentage	31.8	54.5	100.0
Lawyers with 6-10 years of experience	46.0	22.0	32.0
Cumulative percentage	46.0	68.0	100.0
Lawyers with 11-15 years of experience	57.1	28.6	14.3
Cumulative percentage	57.1	85.7	100.0
Lawyers with 16-20 years of experience	68.4	26.3	5.3
Cumulative percentage	68.4	94.7	100.0
Lawyers with 21 and more years of experience	80.0	20.0	0
Cumulative percentage	80.0	100.0	100.0

**Table B.21. Answer to questions 1 and 9d: Responses according to age of lawyers on whether lack of funds is an important reason why courts might encounter difficulties in judging oil related cases fairly (per cent)**

	Very important reason	Important reason	Less important reason
Lawyers between 25 and 30 years old	26.1	26.1	47.8
Cumulative percentage	26.1	52.2	100.0
Lawyers between 31 and 35 years old	39.5	21.1	39.5
Cumulative percentage	39.5	60.6	100.1
Lawyers between 36 and 40 years old	60.0	28.0	12.0
Cumulative percentage	60.0	88.0	100.0
Lawyers between 41 and 45 years old	75.0	18.8	6.3
Cumulative percentage	75.0	93.8	100.1
Lawyers 46 years old and over	83.3	16.7	0
Cumulative percentage	83.3	100.0	100.0

**Table B.22. Answer to questions 5 and 9d: Responses of environmental lawyers on whether lack of funds is an important reason why courts might encounter difficulties in judging oil related cases**

	fairly (per cent)		
	Very important reason	Important reason	Less important reason
Environmental lawyers	68.6	17.1	14.3
Cumulative percentage	68.6	85.7	100.0
Other lawyers	36.2	29.0	34.8
Cumulative percentage	36.2	65.2	100.0

**Table B.23. Answer to questions 1 and 9d: Responses according to age of lawyers on whether resources and skill of oil company's counsel is an important reason why courts might encounter difficulties in judging oil related cases fairly (per cent)**

	Very important reason	Important reason	Less important reason
Lawyers between 25 and 30 years old	4.3	34.8	60.9
Cumulative percentage	4.3	39.1	100.0
Lawyers between 31 and 35 years old	7.9	42.1	50.0
Cumulative percentage	7.9	50.0	100.0
Lawyers between 36 and 40 years old	14.8	44.4	40.7
Cumulative percentage	14.8	59.2	99.9
Lawyers between 41 and 45 years old	11.8	58.8	29.4
Cumulative percentage	11.8	70.6	100.0
Lawyers 46 years old and over	8.3	91.7	0
Cumulative percentage	8.3	100.0	100.0

**Table B.24. Answer to questions 5 and 9d: Responses of environmental lawyers on whether resources and skill of oil company's counsel is an important reason why courts might encounter difficulties in**

	judging oil related cases fairly (per cent)		
	Very important reason	Important reason	Less important reason
Environmental lawyers	12.8	64.1	23.1
Cumulative percentage	12.8	76.9	100.0
Other lawyers	8.8	42.6	48.5
Cumulative percentage	8.8	51.4	99.9

**Table B.25. Answers to questions 5 and 10: Responses of commercial lawyers on whether compensation paid by oil companies for damages in tort is fair**

	Unfair to oil companies as much too high	Unfair to oil companies as somewhat too high	Fair and justified	Unfair to opposing litigant as somewhat too low	Unfair to opposing litigant as much too low
Oil company lawyers	1.4	12.2	14.9	43.2	28.4
Cumulative percentage	1.4	13.6	28.5	71.7	100.1
Other lawyers	1.7	0	10.0	46.7	41.7
Cumulative percentage	1.7	1.7	11.7	58.4	100.1

## To 4.11. Legal Change and Legislation

**Table B.26. Answers to questions 5 and 12: Responses of environmental lawyers on whether environmental law has undergone changes**

	Major change	Some change	No change
Environmental lawyers	16.3	67.4	16.3
Cumulative percentage	16.3	83.7	100.0
Other lawyers	33.8	44.1	22.1
Cumulative percentage	33.8	77.9	100.0

**Table B.27. Answers to question 12: Responses of Lagos and Port Harcourt lawyers on whether environmental law has undergone changes**

	Major change	Some change	No change
Lagos lawyers	23.9	60.7	15.4
Cumulative percentage	23.9	84.6	100.0
Port Harcourt lawyers	21.4	28.6	50.0
Cumulative percentage	21.4	50.0	100.0



**Table B.28. Answers to questions 6b and 12: Responses of oil company lawyers on whether environmental law has undergone changes**

	Major change	Some change	No change
Oil company lawyers	31.1	52.7	16.2
Cumulative percentage	31.1	83.8	100.0
Other lawyers	14.0	63.2	22.8
Cumulative percentage	14.0	77.2	100.0

**Table B.29. Answers to questions 6b and 12: Responses of lawyers who acted as counsel in a lawsuit against an oil company on whether environmental law has undergone changes**

	Major change	Some change	No change
Lawyers who acted in a lawsuit against an oil company	17.1	59.8	23.2
Cumulative percentage	17.1	76.9	100.1
Other lawyers	34.7	53.1	12.2
Cumulative percentage	34.7	87.8	100.0

**Table B.30. Answers to questions 1 and 13: Responses according to age of lawyers on whether the FEPA Act has been effectively enforced (per cent)**

	Effectively enforced	Partially enforced	Not enforced
Lawyers between 25 and 30 years old	4.3	65.2	30.4
Cumulative Percentage	4.3	69.5	99.9
Lawyers between 31 and 35 years old	2.7	81.1	16.2
Cumulative Percentage	2.7	83.8	100.0
Lawyers between 36 and 40 years old	0	62.1	37.9
Cumulative Percentage	0	62.1	100.0
Lawyers between 41 and 45 years old	0	21.1	78.9
Cumulative Percentage	0	21.1	100.0
Lawyers 46 years old and over	0	25.0	75.0
Cumulative Percentage	0	25.0	100.0

**Table B.31. Answers to questions 3 and 13: Responses according to professional experience of lawyers on whether the FEPA Act has been effectively enforced (per cent)**

	Effectively enforced	Partially enforced	Not enforced
Lawyers with 1-5 years of experience	0	52.4	47.6
Cumulative Percentage	0	52.4	100.0
Lawyers with 6-10 years of experience	3.8	71.7	24.5
Cumulative Percentage	3.8	75.5	100.0
Lawyers with 11-15 years of experience	0	58.3	41.7
Cumulative Percentage	0	58.3	100.0
Lawyers with 16-20 years of experience	0	30.0	70.0
Cumulative Percentage	0	30.0	100.0
Lawyers with 21 and more years of experience	0	38.5	61.5
Cumulative Percentage	0	38.5	100.0

**Table B.32. Answers to questions 5 and 13: Responses of environmental lawyers on the enforcement of different pieces of legislation (per cent)**

	Effectively enforced	Partially enforced	Not enforced
Environmental lawyers on the enforcement of the Petroleum Act	10.5	42.1	47.4
Other lawyers	27.9	45.9	26.2
Environmental lawyers on the enforcement of the FEPA Act	2.4	50.0	47.6
Other lawyers	1.4	71.0	27.5
Environmental lawyers on the enforcement of OMPADEC Decree	2.5	47.5	50.0
Other lawyers	4.7	68.8	26.6
Environmental lawyers on the enforcement of the Land Use Act	18.2	61.4	20.5
Other lawyers	47.4	41.0	11.5

**Table B.33. Answers to questions 5 and 13: Responses of commercial lawyers on whether the FEPA Act has been effectively enforced (per cent)**

	Effectively enforced	Partially enforced	Not enforced
Commercial lawyers	2.2	58.2	39.6
Cumulative Percentage	2.2	60.4	100.0
Other lawyers	0	85.0	15.0
Cumulative Percentage	0	85.0	100.0

**Table B.34. Answers to questions 6b and 13: Responses of oil company lawyers on whether the Land Use Act has been effectively enforced (per cent)**

	Effectively enforced	Partially enforced	Not enforced
Oil company lawyers	36.6	53.7	9.8
Cumulative Percentage	36.6	90.3	100.1
Other lawyers	30.6	45.2	24.2
Cumulative Percentage	30.6	75.8	100.0

**Table B.35. Answers to questions 6b and 13: Responses of lawyers who acted in a lawsuit against an oil company on whether the Land Use Act has been effectively enforced (per cent)**

	Effectively enforced	Partially enforced	Not enforced
Lawyers who acted in a lawsuit against an oil company	26.9	54.8	18.3
Cumulative Percentage	26.9	81.7	100.0
Other lawyers	47.1	41.2	11.8
Cumulative Percentage	47.1	88.3	100.1

## To Conclusion

**Table B.36. Results of all cross-tabulations: Deviations from trend by different variables**

Variable	Number of deviations from general trend
Environmental law specialisation      Environmental law specialist versus rest*	21
Commercial law specialisation      Commercial law specialist versus rest*	21
Size of law firm      4 groups	20
Lawyers working for oil industry      Previous work for oil company versus rest	13
Location of law firm      Lagos versus Port Harcourt	12
Professional experience      5 groups	11
Age      5 age groups	10
Lawyers working against oil industry      Previous work against oil company versus rest	7
Gender      Male versus female	7
Criminal law specialisation      Criminal law specialist versus rest*	7
Civil law specialisation      Civil law specialist versus rest*	5
Contact with oil industry      Previous contact with oil company versus rest*	3

\* No responses and unclassifiable responses were excluded

**APPENDIX C**

**Political Economy of Oil in Nigeria:**

**Selected Tables**

**Table C.1. Nigeria's exports (in thousand tons), 1919-1960**

	1919-21	1929-31	1935-37	1951	1960
Palm oil	80	129	150	150	183
Palm kernels	192	255	346	347	418
Ground-nuts	45	151	242	141	333
Cocoa*	20	53	91	122	154
Crude oil	-	-	-	-	847
Tin ore	-	-	15	12	10
Columbite	-	-	1	2	2

\* Cocoa exports are shown in thousand pounds sterling

Source: Meier (1975, 457).

**Table C.2. Production of Crude Petroleum within the Commonwealth (in long tons)<sup>1</sup>, 1956-1971**

	Nigeria	Canada	Qatar	Trinidad	Brunei	Total Commonwealth
1956	0	22,930,855	5,783,812	4,132,681	5,547,433	40,769,100
1957	1,200	24,246,401	6,504,814	4,866,278	5,458,923	43,626,000
1958	270,000	22,066,159	8,091,813	5,336,437	5,089,492	43,803,000
1959	557,000	24,637,133	7,866,650	5,845,542	5,262,702	47,334,000
1960	867,000	25,271,229	8,083,032	6,051,047	4,473,867	47,985,000
1961	2,302,000	29,448,165	8,249,305	6,538,253	4,015,618	53,812,000
1962	3,373,000	32,548,687	8,670,919	6,982,306	3,720,253	59,887,000
1963	3,824,000	34,354,904	8,953,349	6,954,038	3,383,789	64,323,000
1964	6,027,000	36,612,711	8,802,292	7,103,495	3,488,000	73,496,000
1965	13,564,000	39,437,267	9,013,660	6,979,848	3,874,000	88,629,000
1966	20,881,000	42,856,000	8,915,387	7,943,355	4,619,000	105,909,000
1967	15,962,000	46,838,000	9,069,839	9,284,320	5,095,000	109,422,000
1968	6,900,000	50,586,170	n.a.	8,557,000	5,884,000	109,396,000
1969	25,600,000	54,798,657	n.a.	8,204,000	6,005,000	134,036,000
1970	51,970,000	61,490,674	n.a.	7,292,000	6,700,000	176,702,000
1971	74,100,000	66,729,895	n.a.	6,833,000	6,433,000	180,100,000

Source: Overseas Geological Surveys, Mineral Resources Division, *Statistical Summary of the Mineral Industry* (London, Her Majesty's Stationary Office, various years).

<sup>1</sup> 1 long ton is equal to approx. 7.45 barrels.

**Table C.3. Nigerian Crude Oil Production, 1958-1997**

Year	Production (000s barrels/day)	Percentage share of world total	Year	Production (000s barrels/day)	Percentage share of world total
1958	5	0.03	1978	1,895	3.01
1959	10	0.05	1979	2,300	3.50
1960	20	0.09	1980	2,055	3.28
1961	55	0.23	1981	1,440	2.43
1962	70	0.27	1982	1,285	2.25
1963	75	0.27	1983	1,235	2.18
1964	120	0.41	1984	1,390	2.41
1965	275	0.87	1985	1,500	2.61
1966	420	1.22	1986	1,465	2.42
1967	320	0.87	1987	1,325	2.18
1968	145	0.36	1988	1,445	2.28
1969	540	1.23	1989	1,715	2.67
1970	1,085	2.25	1990	1,810	2.75
1971	1,530	3.01	1991	1,890	2.89
1972	1,815	3.39	1992	1,950	2.97
1973	2,055	3.51	1993	1,985	3.01
1974	2,260	3.86	1994	1,990	2.97
1975	1,785	3.20	1995	2,000	2.95
1976	2,065	3.44	1996	2,150	3.09
1977	2,085	3.33	1997	2,285	3.16

Source: *BP Statistical Review of World Energy* (various years).

**Table C.4. Growth of Nigeria's Oil Exports, 1963-1996**

	Total Exports (Naira)	Crude Oil Exports (Naira)	Annual Change in Official Consumer Prices (per cent)	Annual Change in Total Exports (per cent)	Annual Change in Oil Exports (per cent)	Oil Exports as Percentage of Total Exports
1963	372	40	-2.7			10.75
1964	429	64	0.9	15.32	60.00	14.92
1965	535	136	4.1	24.71	112.50	25.42
1966	568	184	9.7	6.17	35.29	32.39
1967	484	145	-3.7	-14.79	-21.2	29.96
1968	422	74	-0.5	-12.81	-48.97	17.54
1969	637	262	10.2	50.95	254.05	41.13
1970	886	510	13.8	39.09	94.66	57.56
1971	1,293	953	16.0	45.94	86.86	73.70
1972	1,434	1,176	3.5	10.90	23.40	82.01
1973	2,278	1,894	5.4	58.86	61.05	83.14
1974	5,795	5,366	12.7	154.39	183.32	92.60
1975	4,829	4,630	33.9	-16.67	-13.72	95.88
1976	6,623	6,196	24.3	37.15	33.82	93.55
1977	7,631	7,083	13.8	15.22	14.32	92.82
1978	6,328	5,654	21.7	-17.08	-20.18	89.35
1979	10,398	9,706	11.7	64.32	71.67	93.34
1980	14,199	13,632	10.0	36.56	40.45	96.01
1981	11,023	10,681	20.8	-22.37	-21.65	96.90
1982	8,206	8,003	7.7	-25.56	-25.07	97.53
1983	7,503	7,201	23.2	-8.57	-10.02	95.97
1984	9,088	8,843	39.6	21.12	22.80	97.30
1985	11,215	10,891	7.4	23.40	23.16	97.11
1986	9,044	8,368	5.7	-19.36	-23.17	92.53
1987	29,578	28,209	11.3	227.05	237.11	95.37
1988	31,193	28,436	54.5	5.46	0.80	91.16
1989	57,971	55,017	50.5	85.85	93.48	94.90
1990	109,886	106,627	7.4	89.55	93.81	97.03
1991	121,534	116,857	13.0	10.60	9.59	96.15
1992	205,613	201,384	44.6	69.18	72.33	97.94
1993	218,801	213,779	57.2	6.40	6.15	97.70
1994	206,059	200,936	57.0	-5.82	-6.01	97.51
1995	748,368	716,206	72.8	263.18	6.39	95.70
1996			29.3			

Source: IMF International Financial Statistics Yearbook (various years).



**Table C.5. Nigeria's oil exports by destination (per cent), 1984-1996**

	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996
United States	14.1	16.8	34.8	49.7	49.9	52.6	50.7	43.6	44.2	45.9	41.8	40.4	45.2
Western Europe	72.3	62.4	54.4	40.4	40.0	37.1	39.5	45.3	43.6	32.7	38.4	33.0	41.0
Latin America	8.1	16.1	4.1	1.7	1.8	1.6	1.6	2.5	2.8	4.0	4.1	5.4	3.8
Africa	3.7	3.3	4.4	6.0	6.1	4.6	4.8	5.0	5.0	5.3	4.8	8.4	2.4
Far-East Asia	n/a	n/a	n/a	n/a	n/a	n/a	0.1	n/a	0.6	7.4	6.9	9.6	5.4
Other*	1.8	1.4	2.3	2.2	2.2	4.1	3.3	3.6	3.8	4.7	4.0	3.2	2.2
Total	100	100	100	100	100	100	100	100	100	100	100	100	100

\* mainly Canada.

Source: computed from *OPEC Annual Statistical Bulletin* (various years).

**Table C.6. Nigerian Gas Production, 1971-1997**

Year	Production (million tonnes oil equivalent)	Percentage share of world total	Year	Production (million tonnes oil equivalent)	Percentage share of world total
1971	0.2	0.02	1985	2.4	0.16
1972	0.2	0.02	1986	2.8	0.18
1973	0.3	0.03	1987	2.7	0.17
1974	0.4	0.04	1988	3.3	0.19
1975	0.4	0.04	1989	3.8	0.22
1976	0.6	0.05	1990	3.6	0.20
1977	0.5	0.04	1991	3.5	0.19
1978	0.3	0.02	1992	3.8	0.21
1979	1.2	0.09	1993	3.8	0.20
1980	1.0	0.07	1994	4.0	0.21
1981	1.6	0.12	1995	4.1	0.21
1982	1.1	0.08	1996	4.2	0.21
1983	1.3	0.10	1997	4.3	0.21
1984	2.5	0.17			

Source: *BP Statistical Review of World Energy* (various years).

**Table C.7. Oil Revenues of the Nigerian Federal Government, 1970-1992**

	Total Federally Collected Revenue (million Naira)	Oil Revenue (million Naira)	Annual Change in Official Consumer Prices (per cent)	Annual Change in Total Revenues (per cent)	Annual Change in Oil Revenues (per cent)	Oil Revenue as Percentage of Total Revenues
1970	632	166	13.8			26.27
1971	1169	510	16.0	84.97	207.23	43.63
1972	1405	764	3.5	20.19	49.8	54.38
1973	1695	1016	5.4	20.64	32.98	59.94
1974	4537	3726	12.7	167.67	266.73	82.12
1975	5515	4272	33.9	21.56	14.65	77.46
1976	6766	5365	24.3	22.68	25.59	79.29
1977	8081	6081	13.8	19.44	13.35	75.25
1978	7371	4654	21.7	-8.79	-23.47	63.14
1979	10913	8881	11.7	48.05	90.83	81.38
1980	15230	12354	10.0	39.56	39.11	81.12
1981	12183	8564	20.8	-20.01	-30.68	70.29
1982	10618	6868	7.7	-12.85	-19.8	64.68
1983	10509	7253	23.2	-1.03	5.61	69.02
1984	11193	8210	39.6	6.51	13.19	73.35
1985	15042	10915	7.4	34.39	32.95	72.56
1986	12302	8107	5.7	-18.22	-25.73	65.90
1987	25100	19027	11.3	104.03	134.7	75.80
1988	27595	19832	54.5	9.94	4.23	71.87
1989	47798	39130	50.5	73.21	97.31	81.87
1990	69788	55215	7.4	46.01	41.11	79.12
1991	78640	60315	13.0	12.68	9.24	76.70
1992	138617	115393	44.6	76.27	91.32	83.25

\* budget estimates

Sources: data on government revenue from the *Economic and Financial Review* and the *Annual Reports* of the Central Bank of Nigeria (various issues); consumer prices from the *IMF International Financial Statistics Yearbook* (various years).

**Table C.8. Nigeria's Foreign-exchange Revenue, 1995-97**

	1995 (million US\$)	1996 (million US\$)	1997 (million US\$)
Oil sales, petroleum profit tax & royalties	7898	10891	11994
Currency purchases by oil companies	366	551	559
Other currency purchases*	92	433	473
Other receipts	214	150	50
Total	8570	12025	13076
Foreign-exchange revenue from oil as percentage of total	96.43	95.15	96.00

\* Mainly currency purchases by banks.

Source: *Economist Intelligence Unit Country Report: Nigeria* (2nd Quarter 1998).

**Table C.9. Petroleum Ministers, 1971-1998**

Years in Office	Name of Minister	Appointed by	Title of Post
1971-1975	Philip Asiodu	General Gowon	Permanent Secretary of the Ministry of Mines and Power
1975-1978	Dr. Mofia Akobo	General Mohammad	Minister of Petroleum & Energy
1984-1985*	Prof. Tam David-West	General Buhari	Minister of Petroleum & Energy
1985-1987	Prof. Tam David-West	General Babangida	Minister of Petroleum Resources
1987-1989	Alhaji Rilwanu Lukman	General Babangida	Minister of Petroleum Resources
1989-1993	Prof. Jubril Aminu	General Babangida	Minister of Petroleum Resources
1993	Philip Asiodu	General Babangida	Secretary for Petroleum & Mineral Resources**
1993	Don Etiebet	General Babangida	Secretary for Petroleum & Mineral Resources***
1993-1995	Don Etiebet	General Abacha	Minister of Petroleum Resources
1995-1998	Dan Etete	General Abacha	Minister of Petroleum Resources

\* There was no minister of petroleum during the civilian rule 1979-1983, chairman of the NNPC and the Adviser on Energy in the office of the President performed the role of minister; \*\* Served in the Transitional Council; \*\*\* Served in the Interim National Government.

Sources: various newspapers and periodicals.

**Table C.10. Evolution of Government Participation in the Major Oil Companies, 1971-1998**

	Government Participation (percent)	Date of Acquisition
Shell-BP	35	April 1973
	55	April 1974
	60	July 1979
Shell*	80	August 1979
	60	June 1989
	55	August 1993
Mobil	55	April 1974
	60	July 1979
Gulf (Chevron)	55	April 1974
	60	July 1979
Agip/Phillips	33.33	April 1971
	55	April 1974
	60	July 1979
Safrap (Elf)	35	April 1971
	55	April 1974
	60	July 1979
Texaco	55	May 1975
	60	July 1979
Pan Ocean	55	January 1978
	60	July 1979

\* Shell-BP until August 1979

Sources: Khan (1994, 69); *Petroleum Economist* (October 1993).

**Table C.11. Share of Foreign Capital in Nigeria's Mining Industry, 1971-1977 and 1985-1989 (per cent)\***

1971	1972	1973	1974	1975	1976	1977	1985	1986	1987	1988	1989
100	98.3	65.0	41.3	37.6	39.2	40.8	20.0	20.0	20.0	20.0	21.8

\* This represents foreign paid-up capital (excluding reserves) in all foreign (wholly and jointly) owned mining companies in Nigeria as a share of total paid-up capital.

Source: *Economic and Financial Review* of the Central Bank of Nigeria (various issues).

**Table C.12. Changes in Selected Financial Incentives in the Nigerian Oil Industry**

	1977	1982	1986	1991
Guaranteed Fiscal Margin (US\$ per barrel)	0.80	1.60	2.00	2.30
Guaranteed Technical Cost (US\$ per barrel)	1.00	1.60	2.00	2.50

Source: Alli (1997).

**Table C.13. Nigerian Private Oil Companies in 1998**

Nigerian Firm (equity share)	Partner (equity share)	Oil Licence in 1998	Area of Oil Licence in 1998 (in sq km)	Issue Date of First Licence	Current Activity in 1996
Dubri Oil (100%)		OML96	232	Aug. 1987	Producing
Queens Petroleum (100%)	Geo International (40%)	OPL135 OPL228	820 1,960	Nov. 1990	Inactive
Cavendish Petroleum (57.5%)	Tuskar Resources (40%); Camac International (2.5%)	OML110	966	Nov. 1990	Developing
Consolidated Oil (100%)		OML103 OPL458	950 1,600	Nov. 1990	Producing
Express Oil & Gas (57.5%)	Du Pont (40%); Camac International (2.5%)	OML108	500	Nov. 1990	Producing
Summit Oil (100%)		OPL205 OPL206	2,130 2,310	Nov. 1990	Drilling
International Petrol Energy Co. (IPEC) (100%)		OPL202 OPL229	1,930 1,460	Nov. 1990	Inactive
Paclantic Oil (n/a)	n/a	n/a	n/a	Nov. 1990	Inactive
Inki Petroleum (renamed Oriental Energy) (97.5%)	Camac International (2.5%)	OPL224	305	Nov. 1990	Drilling
Ultramar Energy (100%)		OPL227	900	Nov. 1990	Inactive
Solgas (60%)	Niko Resources (40%)	OPL226	1,500	Feb. 1991	n/a
Atlas Petroleum	Canadian Occidental Petroleum (20%); Profco Resources (10%); Summit Partners Management (10%)	OML109	785	Feb. 1991	Developing
Supra Investments (renamed Amalgamated) (100%)		OPL452	520	May 1991	Inactive
Union Square Petrogas (n/a)	n/a	n/a	n/a	July 1991	Inactive

Seagull (n/a)	n/a	n/a	n/a	July 1991	Inactive
Moncrief Oil (100%)		OPL471	1,375	July 1991	Inactive
Yinka Folawiyo Petroleum (60%)	Abacan (40%)	OPL309	1,600	July 1991	Drilling
Alfred James Petroleum (60%)	Abacan (40%)	OPL302	1,900	July 1991	Drilling
General Oil (100%)		OPL304	1,580	July 1991	Inactive
Allied Energy Resources (60%)	Statoil (20%); BP (20%)	OPL210	1,700	June 1992	Drilling
Noreast Petroleum (100%)*		OPL840	2,535	June 1992	Exploring
		OPL902	2,450		
Amni Petroleum (60%)	Abacan (40%)	OPL237	51	1993	Producing
		OPL469	440		
Peak Petroleum (60%)	NTI Resources (40%)	OPL460	1,632	1993	Drilling
Intoil (n/a)	n/a	n/a	n/a	1993	Inactive
Optimum Petroleum (60%)	Abacan (40%)	OPL310	1,850	1993	Exploring
Famfa Oil (60%)	Texaco (40%)	OPL216	2,550	1993	Exploring
Azenith (n/a)	n/a	n/a	n/a	1993	Inactive
Crescent Oil (100%)		OPL234	1,380	1993	Inactive
First Aries (100%)		OPL235	1,280	1993	Inactive
Asaris	n/a	n/a	n/a	1993	Inactive
Petroleum Products (60%)	Abacan (40%)	OPL233	127	1993	n/a
Nyemoni Petroleum (n/a)	n/a	n/a	n/a	1993	Exploring
Sunlink Petroleum (n/a)	n/a	n/a	n/a	1993	Inactive
MLM Petroleum (n/a)	n/a	n/a	n/a	1993	Inactive
Marcena (100%)		OPL231	237	1993	Inactive
Brass Petroleum (100%)		OPL208	1,880	1993	Inactive
Dania Oil (100%)		OPL236	1,160	1993	Inactive
Lamont Oil (100%)		OPL207	1,700	1993	Inactive

\* Noreast was also part of a joint-venture with Mobil (40% equity share in the Noreast venture) to exploit OPL215.  
Sources: Avuru (1997, 294); Petroconsultants (1998).

**Table C.14. After Tax Profit Oil Split**

Country	Government Share (percentage)	Contractor Share (percentage)
Nigeria	35-65/20-80	65-35/80-20
Albania	80	20
Egypt	81	19
Gabon	67-87	33-12
Indonesia	85	15
Libya	81-90	19-10
Malaysia	80-84	20-16

Source: Omalu (1996, 74).

**Table C.15. Gas flaring exemptions and fines, 1985**

	Shell	Mobil	Gulf*	Texaco	Elf	Ashland	Tenneco	Pan Ocean
Wells fined	29	5	10	2	2	2	0	0
Wells exempted	55	10	7	3	4	1	1	1
Total wells	84	15	17	5	6	3	1	1

\* today Chevron

Source: Synge (1986, 37).

**Table C.16. Gas Flaring Fines and Royalty Payments of Selected Oil Companies, 1994 (in Naira)**

	Mobil	Shell	Agip	Chevron	Texaco	Elf	Pan Ocean
Flaring Fine	142,172,123	45,812,536	19,121,464	41,127,877	4,886,242	5,631,705	8,792,372
Royalty	3,035,262,789	7,867,852,174	1,780,944,892	3,436,626,704	714,578,719	3,178,406,934	123,856,301
Fine as Percentage of Royalty	4.68%	0.58%	1.07%	1.20%	0.68%	0.18%	7.10%

Source: Nigeria's Oil and Gas Publications (1996, 52).



# **APPENDIX D**

## **Selected Technical and Economic Data on Nigeria's Oil Industry**

**Table D.1. Number of Wells Completed by Shell-BP, 1952-1960**

	1952	1953	1954	1955	1956	1957	1958	1959	1960*
Exploration Wells	2	8	10	8	4	2	18	37	16
Appraisal Wells	-	-	2	4	2	8	15	16	6
Total Wells	2	8	12	12	6	10	33	53	22

\* Until October 1960.

Source: Shell-BP (1960, 13).

**Table D.2. Spot price of 'Nigeria Light' crude, 1979-1997 (in US\$/barrel)**

1979	1980	1981	1982	1983	1984	1985	1986	1987	1988
32.00	37.18	36.67	33.75	30.01	28.96	27.74	14.60	18.46	15.10
1989	1990	1991	1992	1993	1994	1995	1996	1997	
18.50	24.27	20.50	19.92	17.60	16.21	17.35	21.17	19.44	

Source: BP Statistical Review of World Energy (1998).

**Table D.3. Causes and volume (in thousand barrels) of Shell's oil spills in Delta State, 1991-1994**

	1991		1992		1993		1994	
	Number of spills	Volume of spills	Number of spills	Volume of spills	Number of spills	Volume of spills	Number of spills	Volume of spills
Corrosion of equipment	17	266	24	183	26	131	25	124
Equipment Failure	22	178	20	126	17	275	15	89
Sabotage	7	26	9	642	13	161	13	235
Other	23	233	19	269	16	50	20	65
Total	69	705	72	1220	72	617	73	515

Source: World Bank (1995, Annex M).

**Table D.4. Frequency of Nigerian Oil Fields by Size, 1995**

Field size (million barrels)	Number of onshore fields	Number of offshore fields (below 50m water depth)	Number of offshore fields (above 50m water depth)	Total number of fields
700-800	3	3		6
500-699	2	1		3
400-499	5	2		7
300-399	3	3		6
200-299	8	7		15
100-199	32	12	2	46
80-99	7	4	1	12
60-79	11	6		17
40-59	22	13	1	36
20-39	23	7	5	35
5-20	57	11	1	69
Total	173	69	10	252

Source: Thomas (1995).

**Table D.5. Comparison of wells completed in selected countries and regions in 1996**

	Oil	Gas	Dry	Suspended	Service	Total Wells	Dry Wells as % of Total
Nigeria	118	2	7	10	1	138	5.07
United States	14,896	12,864	8,420	471	1,600	38,251	22.01
Indonesia	337	24	67	42	388	858	7.81
Vietnam	28	18	10	0	0	56	17.86
Peru	89	0	16	0	0	105	15.24
Africa	496	82	126	26	35	765	16.47
South America	2,538	96	244	99	83	3,060	7.97
Western Europe	328	196	139	24	69	756	18.39
Middle East	604	60	53	6	75	798	6.64

Source: *World Oil* (August 1997).

**Table D.6. Proved Oil and Gas Reserves, 1984-1997**

	Oil			Gas		
	Reserves (billion barrels)	Reserves as Percentage Share of World Total	Reserves/ Production Ratio (years)	Reserves (trillion cubic metres)	Reserves as Percentage Share of World Total	Reserves/ Production Ratio (years)
1984	16.7	2.4	32.8	1.0	1.1	over 100
1985	16.6	2.3	31.0	1.3	1.4	over 100
1986	16.0	2.3	30.2	1.3	1.3	over 100
1987	16.0	1.8	34.1	2.4	2.2	over 100
1988	16.0	1.7	32.2	2.4	2.2	over 100
1989	16.0	1.6	27.5	2.5	2.2	over 100
1990	17.1	1.7	27.1	2.5	2.1	over 100
1991	17.9	1.8	26.0	3.0	2.4	over 100
1992	17.9	1.8	26.6	3.4	2.5	over 100
1993	17.9	1.8	25.8	3.4	2.4	over 100
1994	17.9	1.8	26.1	3.4	2.4	over 100
1995	20.8	2.1	30.2	3.1	2.2	over 100
1996	15.5	1.5	19.9	3.0	2.1	over 100
1997	16.8	1.6	20.2	3.3	2.2	over 100

Sources: *BP Statistical Review of World Energy* (various years).

**Table D.7. Comparison of selected crude oil streams**

Nigerian Crude Oil Stream	Sulphur Content (Percentage)	°API	Non-Nigerian Crude Oil Stream	Country of Origin	Sulphur Content (Percentage)	°API
Bonny Light	0.12	36.7	Arabian Light	Saudi Arabia	1.80	33.4
Bonny Medium	0.23	25.2	Bachequero	Venezuela	2.40	16.8
Brass River	0.09	40.9	Dubai	Dubai	1.68	32.5
Escravos	0.14	36.2	Ekofisk	Norway	0.18	35.8
Forcados	0.29	29.7	Iranian Light	Iran	1.40	33.5
Pennington	0.07	36.6	Kuwait	Kuwait	2.50	31.2
Qua Iboe	0.12	35.8	North Slope	United States	1.04	26.8

Sources: Hyne (1995, 16) and Thomas (1995).

**Table D.8. Percentage share of Nigeria's crude oil production by company, 1970-1996**

	Shell-BP	Gulf*	Mobil	Agip	Elf	Texaco	Ashland**	Others
1970	74.47	20.05	4.68	0.45	0	0.35	0	0
1971	72.96	17.76	4.79	2.17	1.54	0.68	0	0
1972	67.50	16.86	9.17	2.87	3.04	0.56	0	0
1973	63.41	17.76	10.90	4.60	2.93	0.40	0	0
1974	59.99	16.36	13.14	6.86	3.55	0.10	0	0
1975	63.50	12.38	10.64	8.79	3.91	0.42	0.36	0
1976	59.53	14.14	11.14	8.92	3.67	1.67	0.47	0.46
1977	58.18	13.85	10.64	10.21	3.79	2.53	0.33	0.47
1978	57.20	13.80	10.52	11.08	4.08	2.27	0.46	0.59
1979	56.93	16.27	10.57	9.62	3.40	2.34	0.35	0.52
1980	56.69	16.57	10.59	8.93	4.17	2.10	0.41	0.54
1981	51.37	19.58	11.17	8.79	5.05	2.39	0.66	0.99
1982	50.82	16.37	10.57	9.96	7.21	2.91	1.26	0.90
1983	50.15	14.13	13.15	9.58	7.24	3.56	1.26	0.93
1984	50.27	13.47	12.82	9.09	7.05	4.71	1.77	0.82
1985	49.89	16.56	11.98	9.95	6.23	3.10	1.56	0.73
1986	48.30	16.85	12.30	9.12	5.87	4.45	2.44	0.67
1987	49.26	15.96	12.31	8.83	6.18	4.38	2.55	0.54
1988	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1989	52.72	15.58	12.42	7.70	5.28	3.41	2.12	0.77
1990	51.18	15.29	13.16	9.50	5.30	3.24	2.11	0.22
1991	50.74	16.23	14.45	7.42	5.03	3.12	1.62	1.39
1992	49.50	16.18	16.76	7.15	4.96	2.96	1.26	1.22
1993	48.15	16.48	21.19	6.99	5.07	0	0.96	1.17
1994	48.15	16.48	21.19	6.99	5.07	0	0.96	1.17
1995	46.11	19.87	14.81	7.70	6.56	2.80	0.96	1.18
1996	46.11	19.87	14.81	7.7	6.56	2.80	0.96	1.18
1997***	42.14	18.08	20.83	6.55	5.90	3.58	1.09	1.83

\* now Chevron; \*\* Ashland lost its oil licences in 1997, Addax bought the licences in 1998; \*\*\* April figures

Sources: 1970-85 data from NNPC (1986); 1986-96 data from OPEC Annual Statistical Bulletin (various years), 1990 figures from Quinlan (1992: 23); 1997 data from *Petroleum Argus* (April 21, 1997).

**Table D.9. Oil Companies in Nigeria with Oil Prospecting Licences and Oil Mining Leases in 1966,  
1986 and 1998**

Company	1966 Concession Area (sq km)	Company	1986 Concession Area (sq km)	Company	1998 Concession Area (sq km)
Shell-BP*	48,946	Shell	31,309	Shell	43,052
SAFRAP (Elf)	23,600	Elf	8,256	Elf	21,542
Gulf (Chevron)	17,754	Gulf (Chevron)	14,138	Chevron	23,726
Tennessee	8,721	Mobil/Tennessee	2,259		
Agip	5,260	Agip/Phillips	5,259	Agip/Phillips	5,259
Mobil	5,245	Mobil	2,562	Mobil	5,619
Amoseas	5,001				
Phillips	3,629	Phillips	232		
		Texaco	2,570	Texaco	2,570
		Pan Ocean	1,005	Pan Ocean	503
		Nigus	1,025		
		Agip Energy	360	Agip Energy	5,060
				Statoil-BP	6,059
		NNPC	40440	NNPC	690
				NPDC**	2,625
				NAPIMS**	24,000
				over 40 others	84,739
Total	118,156	Total Concessions	109,415	Total Concessions	225,444
Concessions					

\* Shell from 1979; \*\* NNPC subsidiaries.

Sources: 1966 data computed from Schätzl (1969, 8); 1986 data from Khan (1994, 21); 1998 data from Petroconsultants (1998).

**Table D.10. Seismic surveys in Nigeria in 1997**

Operator	Concession Block	Terrain	Duration	Type	2-D Line/ 3-D Area	Seismic Contractor
Agip (NAOC) <sup>i</sup>	OPL211	Marine	Jul.96-Feb.97	3-D	2,000 sq.km	Western Geophysical
Agip (NAOC)	OPL316	Marine	Dec.96-May 97	3-D	1,487 sq.km	Western Geophysical
Agip (NAOC)	OML60	Swamp	Jan.97-Sep.97	3-D	405 sq.km	Western Geophysical
Ashland	OPL98	Marine	Nov.96-May 97	3-D	436 sq.km	Western Geophysical
Consolidated Oil	OML103	Swamp	Nov.97-	3-D	n/a	Western Geophysical
Esso (EEP) <sup>ii</sup>	OPL209	Marine	Feb.97-Feb.97	2-D	1,805 km	n/a
Famfa Oil	OPL216	Marine	Dec.96-Mar.97	3-D	1,650 sq.km	GECO-Prakla
Famfa Oil	OPL216	Marine	Jun.97-Jun.97	2-D	1,187 km	GECO-Prakla
Mobil	OPL94	Marine	Dec.96-Jan.97	3-D	530 sq.km	Western Geophysical
NPDC <sup>iii</sup>	OPL110	Land	Mar.97-Jul.97	3-D	142 sq.km	United Geophysical
Noreast Petroleum	OPL215	Marine	Dec.97-	3-D	n/a	GECO-Prakla
Peak Petroleum	OPL460	Marine	Jun.97-Jun.97	3-D	n/a	n/a
Shell (SNEPCO) <sup>iv</sup>	OPL803	Land	Jan.97-Jun.97	2-D	750 km	n/a
Shell (SNEPCO)	OPL212	Marine	Nov.96-Feb.97	3-D	n/a	Western Geophysical
Shell (SPDC) <sup>v</sup>	OML29	Land	Oct.96-Jul.97	3-D	437 sq.km	GECO-Prakla
Shell (SPDC)	OML11	Swamp	Nov.96-Feb.97	3-D	329 sq.km	Western Geophysical
Shell (SPDC)	OML22	Land	Feb.97-Oct.97	3-D	209 sq.km	Western Geophysical
Shell (SPDC)	OML28	Land	Jul.97-Oct.97	3-D	258 sq.km	GECO-Prakla
Shell (SPDC)	OML38	Land	Jul.97-	3-D	397 sq.km	CGG
Shell (SPDC)	OML18	Swamp	Oct.97-	3-D	103 sq.km	Western Geophysical
Shell (SPDC)	OML34	Land	Nov.97-	3-D	n/a	United Geophysical
Shell (SPDC)	OML1	Swamp	Dec.96-Jun.97	3-D	163 sq.km	CGG
Statoil	OPL213	Marine	Mar.97-May 97	3-D	1,086 sq.km	CGG
Statoil	OPL217	Marine	Dec.96-Mar.97	3-D	1,675 sq.km	CGG
Yinka Fawale	OPL309	Marine	Jun.97-Jul.97	3-D	325 sq.km	PGS (Petr.Geo-Services)

<sup>i</sup> Nigerian Agip Oil Corporation (NAOC); <sup>ii</sup> Esso Exploration and Production Nigeria (EEP); <sup>iii</sup> Nigerian Petroleum Development Company (NPDC), owned by the NNPC; <sup>iv</sup> Shell Nigeria Exploration and Production Company (SNEPCO); <sup>v</sup> Shell Petroleum Development Company (SPDC)

Source: Petroconsultants (1998, 30).



**Table D.11. Exploration and Appraisal Wells Drilled in Nigeria in 1997**

	Concession Block	No. of Wells	Terrain	Name of Well
Agip (NAOC) <sup>i</sup>	OML61	1	Land	Ebegoro Deep 1
Ashland	OPL90	1	Continental Shelf	Okwori South 3
Atlas Petroleum	OML109	3	Continental Shelf	Ejulebe 3, 4 and 5
Chevron	OML95	1	Continental Shelf	Azama 1
Conoco (Du Pont)	OPL220	1	Deep Water	Ebitemi 1
Consolidated Oil	OML103	3	Continental Shelf	Bella North Deep 1, Ebisan 1 and 2
Elf	OPL223	1	Continental Shelf	Ine 1
	OPL222	1	Deep Water	Okpok 1
	OML102	1	Continental Shelf	Ekanga 1
Express Petroleum & Gas	OPL74	1	Continental Shelf	Ukpokiti 2
Mobil	OML70	4	Continental Shelf	Ekepkp 1, Adua 15, Ebeiso 1, Ikut 1
	OPL221	1	Deep Water	Adaka 1
	OPL94	2	Continental Shelf	Yoho 7, Awawa 2
	OML67	7	Continental Shelf	Iyak Southeast 12ST, Esuk 1, Edop 40 and 41, Offiong 1, Inuen 2, Itut North 2
Moni Pulo	OPL230	4	Continental Shelf	Efiat 1, Cross River 1, Obio 1, Abana 1
NAPIMS <sup>ii</sup>	OPL418	1	Chad Basin	Kadaru 1
	OPL421	1	Chad Basin	Wushe 1
NPDC <sup>iii</sup>	OML65	2	Land	Abura Southeast 2, Owopole North 2
Peak Petroleum	OPL460	1	Continental Shelf	Preye 1
Shell (SNEPCO) <sup>iv</sup>	OPL219	1	Deep Water	N'Golo 1
	OPL212	3	Deep Water	Bonga 2 and 3ST
Shell (SPDC) <sup>v</sup>	OML38	1	Swamp	Omoja 1
	OML20	1	Land	Egbema West 21
	OML35	1	Swamp	Seibou 2
Statoil	OPL218	2	Deep Water	Sehki 1, Gbigiri 1
Texaco	OML88	1	Continental Shelf	Chioma North 2STK-1
	OML86	1	Continental Shelf	Akuku 1
Yinka Folawiyo	OPL309	1	Continental Shelf	Aje 2

<sup>i</sup> Nigerian Agip Oil Corporation (NAOC); <sup>ii</sup> Nigerian Petroleum Investment Management Service (NAPIMS), owned by the NNPC; <sup>iii</sup> Nigerian Petroleum Development Company (NPDC), owned by the NNPC; <sup>iv</sup> Shell Nigeria Exploration and Production Company (SNEPCO); <sup>v</sup> Shell Petroleum Development Company (SPDC)

Source: Petroconsultants (1998, 38-39).

**Table D.12. Principal Crude Oil Loading Terminals in Nigeria**

Name of Terminal	Operator	Location	Distance from Lagos (to the south-east in km)	Max. Tanker Size (in thousands dwt)	Loading Capacity (tons/hour)	Storage Capacity (in million barrels)
Anten	Ashland/Anten	offshore	n/a	270	n/a	1.75
Bonny	Shell	onshore	560	135	5,000	n/a
Bonny	Shell	offshore	560	320	6,000	n/a
Brass	Agip	offshore	470	300	5,000	3.5
Escravos	Chevron	offshore	220	300	4,000	3.6
Forcados	Shell	offshore and onshore	260	254	9,000	13 (Bonny and Forcados storage capacity combined)
Ima	Amni	n/a	n/a	270	8,200	n/a
Odudu	Elf	n/a	n/a	280	n/a	n/a
Oso Field	Mobil	n/a	n/a	140	n/a	n/a
Pennigton	Texaco	offshore	370	250	3,000	2
Port Harcourt	NNPC	onshore	n/a	n/a	n/a	1.1
Qua Iboe	Mobil	offshore	650	300	7,200	6.5

Sources: OECD (1997, II.22); Nigeria's Oil and Gas Publications (1996, 32).

**Table D.13. Gas Flared in Nigeria in 1994 and 1997 (in thousand cubic feet)**

	Shell	Chevron	Agip	Mobil	Elf	Texaco	Ashland	Pan-Ocean	AENR*	Total Gas Flared
Gas Flared (cubic feet) in 1994	294,908	186,407	97,260	92,645	29,249	25,573	32,169	12,015	8,500	778,726**
Gas Flared (cubic feet) in 1997	222,013	176,966	150,690	116,465	33,894	44,770	32,559	16,576	7,914	801,847**
Gas Flared as Percent of Nigeria's Total in 1994	37.9	23.9	12.5	11.9	3.8	3.3	4.1	1.5	1.1	100.0
Gas Flared as Percent of Nigeria's Total in 1997	27.7	22.1	18.8	14.5	4.2	5.6	4.1	2.1	1.0	100.1
Gas Flared as Percent of the Company's Total in 1997	64.7	91.3	53.5	64.3	95.1	99.7	90.6	95.2	99.1	-

\* Agip Energy; \*\* excluding the smaller oil producing companies such as Amni

Sources: 1994 figures from Nigeria's Oil and Gas Publications (1996, 51); 1997 figures from *Vanguard* (1 October 1998).

**Table D.14. Oil spills in the Delta and Rivers States of Nigeria, 1991-1993**

Year	Delta State		Rivers State			
	Number of spills	Quantity spilled (in barrels)	Number of spills at Shell	Number of spills	Quantity spilled (in barrels)	Number of spills at Shell
1991	78	950	50	98	5103	86
1992	129	12,232	55	223	21,480	143
1993	116	909	58	232	8,101	248
Average per year	107	4,697	56	184	9,893	159

Source: World Bank (1995, volume II, annex M).

**Table D.15. Age of flowlines and number of flowlines in SPDC's Western Division in Nigeria**

Age (in years)	Number of Flowlines	Percentage of Total Flowlines	Percentage of Leaks
0-5	115	12.79	2.5
6-10	49	5.45	2.5
11-15	102	11.35	12
16-20	168	18.69	29
21 and over	465	51.72	54

Source: adopted from Ashton-Jones (1998, 187).

**Table D.16. Flaring of Natural Gas in Major Oil Producing Countries**

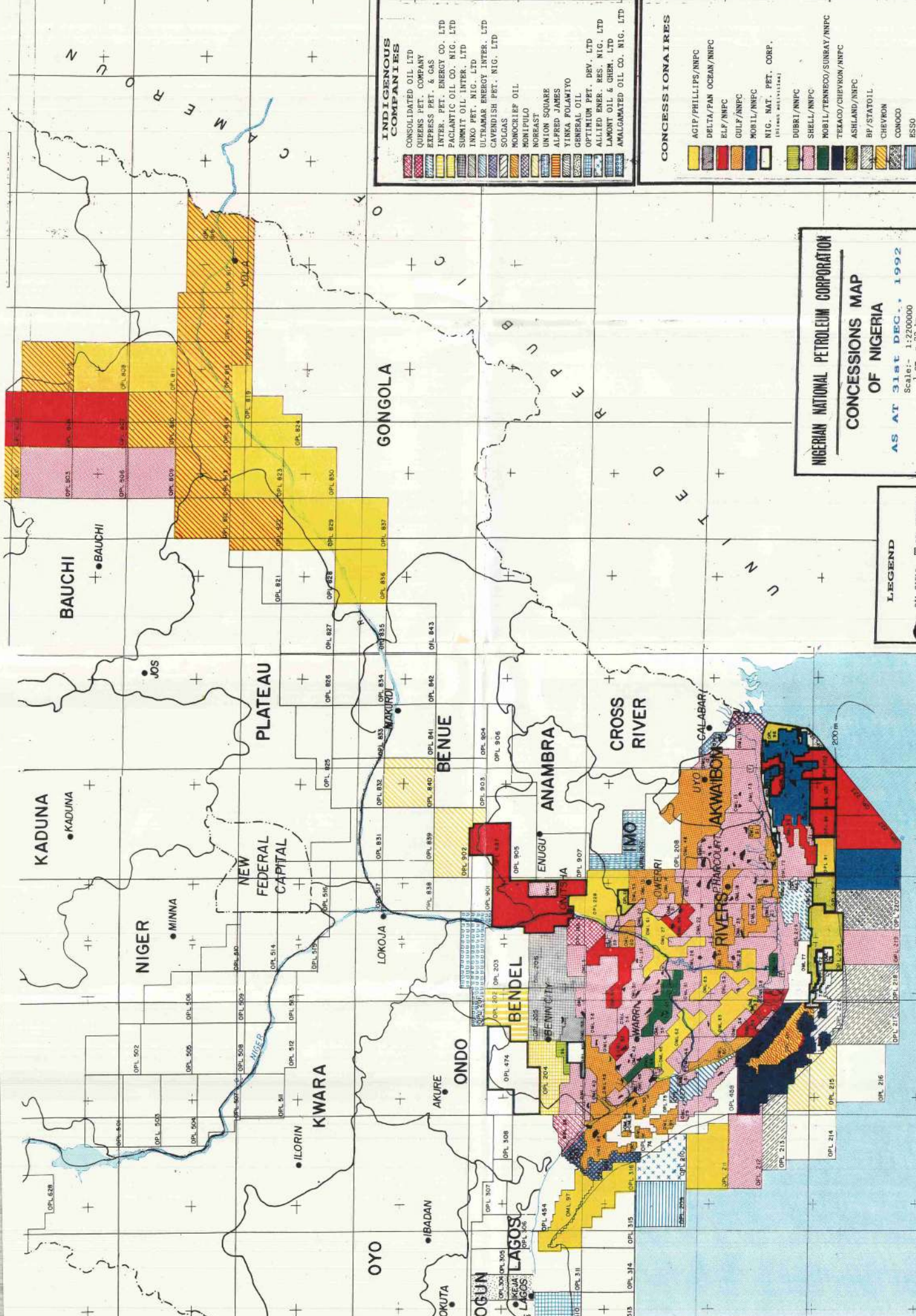
OPEC countries	Percent of Gross Production	Non-OPEC countries	Percent of Gross Production
Nigeria	76.0%	USA	0.6%
Libya	21.0%	Holland	0
Saudi Arabia	20.0%	Britain	4.3%
Iran	19.0%	Former Soviet Union	1.5%
Algeria	4.0%	Mexico	5.0%
OPEC Total	18.0%	World Total	4.8%

Source: World Bank (1995, volume I, 59).

**APPENDIX E**

**Map of Nigeria with Oil Concessions,  
December 1992**





- INDIGENOUS COMPANIES**
- CONSOLIDATED OIL LTD
  - QUEENS PET. COMPANY
  - EXPRESS PET. & GAS
  - INTER. PET. ENERGY CO. LTD
  - PACIFIC OIL CO. NIG. LTD
  - SUMMIT OIL INTER. LTD
  - INKO PET. NIG. LTD
  - ULTRAMAR ENERGY INTER. LTD
  - CAVENDISH PET. NIG. LTD
  - SOLGAS
  - MONOCRIEF OIL
  - MONIPULO
  - NOREAST
  - UNION SQUARE
  - ALFRED JAMES
  - YINKA POLAMITO
  - GENERAL OIL
  - OPTIMUM PET. DEV. LTD
  - ALLIED ENER. RES. NIG. LTD
  - LAMOT OIL & CHEM. LTD
  - AMALGAMATED OIL CO. NIG. LTD

- CONCESSIONAIRES**
- AGIP/PHILLIPS/NNPC
  - DELTA/PAN OCEAN/NNPC
  - ELF/NNPC
  - GULF/NNPC
  - MOBIL/NNPC
  - NIG. NAT. PET. CORP. (direct activities)
  - DUBRI/NNPC
  - SHELL/NNPC
  - MOBIL/TENNECO/SUNRAY/NNPC
  - TEKACO/CHEVRON/NNPC
  - ASHLAND/NNPC
  - BP/STATOIL
  - CHEVRON
  - CONOCO
  - ESSO

**NIGERIAN NATIONAL PETROLEUM CORPORATION**

**CONCESSIONS MAP OF NIGERIA**

AS AT 31st DEC., 1992

Scale:- 1:2200000  
1 cm. = 22 km

**LEGEND**

Oil Field    Oil Terminal